

## Opinion No. 86-03

August 11, 1986

**OPINION OF:** Paul Bardacke, Attorney General

**BY:** STEPHEN WESTHEIMER, Deputy Attorney General; CAROLYN WOLF, Assistant Attorney General

**TO:** HONORABLE MICHAEL ALARID, New Mexico State Senate 1605 Escalante, S.W., Albuquerque, New Mexico 87104

### QUESTIONS

May a campaign or political party worker lawfully distribute or pick up absentee ballots for other voters?

### CONCLUSIONS

1. No one other than a County Clerk or the Clerk's deputy may distribute an absentee ballot. Delivery may be made to an absentee voter by mail.
2. A third person may deliver a completed absentee ballot to the County Clerk.

### OPINION

#### DISCUSSION

Absentee voting in New Mexico is governed by the provisions of the Absentee Voter Act, Section 1-6-1 through 1-6-18, NMSA 1978, as amended.

To qualify as an absentee voter, a person "must in good faith have a reasonable belief that he [or she] may be unable to vote in person on election day for one or more of the specific statutory reasons and must sign the proper affidavits under oath to prove his [or her] status." **Kiehne v. Atwood**, 93 N.M. 657, 604 P.2d 123 (1979). The reasons a person may vote by absentee ballot are enumerated by statute. Section 1-6-3, NMSA 1978, as amended.

To encourage the registration of qualified electors, New Mexico law permits a specified number of campaign and political party workers, as well as representatives of civic organizations, labor councils, management associations, and Indian tribes to be appointed deputy registration officers. Section 1-4-40, NMSA 1978, as amended. A deputy registration officer may:

1. assist in the preparation of absentee ballot applications; and

2. witness the oath on absentee ballot applications and on absentee ballot outer envelopes.

Section 1-4-41, NMSA 1978, as amended.

Section 1-6-4(F), NMSA 1978, as amended, states that "[a]pplication forms for absentee ballots shall be delivered or mailed by the County Clerk or Deputy Registrar only to the voter requesting an absentee ballot." This provision means that a person wishing to vote by absentee ballot must make that fact known to the County Clerk in person, by mail, or by telephone. Because the application form for an absentee ballot may be delivered only to the voter requesting it, the request to the County Clerk must precede the delivery of the application. After a request for an absentee application has been made to the County Clerk by a voter, a Deputy Registrar may in the discretion of the County Clerk, deliver the application and assist in its preparation. After receiving the completed absentee ballot application, the County Clerk must determine whether the applicant is a qualified voter. If the applicant qualifies to vote by absentee ballot but does not mark the absentee ballot in the office of the County Clerk, the absentee ballot may be delivered or mailed to the qualified absentee voter. However, "[N]o absentee ballot shall be delivered or mailed to any person other than the applicant for such ballot." Section 1-6-5(G), NMSA 1978, as amended.

Because a statute specifically authorizes a Deputy Registrar to deliver an **application form** for an absentee ballot to a voter requesting it, and specifically prohibits an absentee **ballot** being delivered to any person other than the applicant we conclude that no one other than the County Clerk or the Clerk's deputy may distribute or deliver an absentee ballot itself. Furthermore, if the absentee ballot is not mailed, delivery of the ballot may be made only in the Clerk's office to the absentee voter, who immediately votes the ballot.

Once the absentee ballot has been delivered by the County Clerk or the Clerk's deputy, and has been marked and sealed by the qualified absentee voter, the law permits a Deputy Registrar to witness the oath on the ballot outer envelopes. Section 1-4-40, NMSA 1978, as amended. However, it should be noted that the witnessing of the oath may be done by any person authorized to administer oaths.

After completing the absentee ballot and swearing to it before a person authorized to administer oaths, the elector must deliver or mail the ballot to the appropriate County Clerk.

Section 1-6-9, NMSA 1978, as amended. In **Kiehne v. Atwood**, 93 N.M. 657, 604 P.2d 123 (1979), New Mexico Supreme Court stated:

No mandatory requirement of personal delivery of the completed ballots, as opposed to having a third party perform the task, can be read into this statute.

Therefore, we conclude that a third person may deliver a completed absentee ballot to the County Clerk.

The steps in obtaining and returning an absentee ballot may be summarized as follows:

1. **Request for absentee ballot application.** Request must be made to the County Clerk or a Clerk's deputy in person, by mail or by phone by the person wishing to vote by absentee ballot.
2. **Delivery of absentee ballot application.** The application form may be delivered to the person who has previously requested it from the County Clerk by the County Clerk or a Deputy Registrar. Delivery may be accomplished by mail.
3. **Preparation of the absentee ballot application.** Anyone may assist a person wishing to vote by absentee ballot in the preparation of the absentee ballot application.
4. **Delivery of completed absentee ballot application.** Anyone may deliver a completed absentee ballot application to the County clerk. Delivery may be accomplished by mail.
5. **Delivery of Absentee ballot.** No one other than the County Clerk or the Clerk's deputy may deliver an absentee ballot to a qualified absentee voter. The ballot must be delivered to the qualified absentee voter, and to no one else. Delivery may be accomplished by mail. Personal delivery from the Clerk or Clerk's deputy to the absentee voter may be made only in the Clerk's office.
6. **Marking of the absentee ballot.** An absentee ballot must be marked in secret by the absentee voter. However, should an absentee voter require assistance in marking the ballot, such assistance must be accomplished under the provisions of Sections 1-12-13 through 1-12-18, NMSA 1978, as amended.
7. **Witnessing the oath on absentee ballot outer envelopes.** Any person authorized to administer an oath may witness the oath on the absentee ballot outer envelope. A deputy registration officer is specifically authorized to witness such an oath.
8. **Delivery of completed absentee ballot.** Any person may deliver the completed absentee ballot to the County Clerk. Delivery may be accomplished by mail.

## **ATTORNEY GENERAL**

Paul Bardacke, Attorney General