

## Opinion No. 12-926

July 28, 1912

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Hon. Antonio Lucero, Secretary of State, Santa Fe, N. M.

### **ELECTION.**

Poll books should be sent to Secretary of State and ballot boxes to the County Clerk.

### **OPINION**

{\*69} I have examined draft of instructions to election officers submitted to me by you a few days ago, and have but one substantial change to recommend, and that is that the election officers shall not be required to send the ballot boxes to Santa Fe.

When we reflect upon the fact that that there are something like 700 ballot boxes in the state, many of them of large size, the expense and inconvenience of sending them all here would be very great. The officers of election would certainly not prepay the express and I know of no fund adequate to such expenses, from which you could make payment. It is clear that unless constrained by law this procedure should not be adopted, and I am of opinion that it is not required.

It is to be regretted that the legislation is not more adequate and specific. The constitution requires in general terms that the returns shall be sealed up and transmitted to you, and the ballot boxes and ballots must be transmitted to you if they are part of the returns. The construction does not indicate what is meant by the returns of an election, and as the word is ordinarily used it would not include such things as ballots and ballot boxes, although there are serious differences of opinion on that subject. There being nothing in the constitution to guide us, we must seek for the meaning of the term in the statutes in force, and the last one on this subject is Chapter 105 of the Laws of 1909. It is apparent from the language of Section 12 of that act that the Legislature did not consider the ballot boxes or ballots as a part of the "returns," as it speaks of the "ballots and returns" being placed in the ballot box, and also of conveying to the county clerk "such returns and ballot box." The returns are something different from the ballots and ballot boxes, and it is only the "returns" which are to be transmitted to you. It is true that said Section 12 directs that the returns shall be placed in the ballot boxes, but as the constitution provides that the returns are to be sent to the Secretary of State, it is obvious that the constitution so far modifies the statute as to make it unnecessary to put the returns in the ballot box.

We have an adjudication by the Supreme Court of New Mexico which supports the foregoing views, although the statutes have been somewhat changed since the decision was rendered. In the case of Bull vs. Southwick, which is reported in the second volume

of the Reports of New Mexico, we find at page 359 a distinct statement that "The poll books of the several precincts with the proper certificates attached and so filled out, constitute the returns of the judges of {\*70} election to be transmitted to the canvassing board;" and further, beginning at the foot of the same page it is said that "the ballots sealed up and locked up in the ballot box and deposited for safekeeping pending any election contest that might be instituted, constitute no part of the returns of the judges of election to be canvassed by the Board of Canvassers."

My recommendation is that you instruct the officers of election to seal up and send to you, as the returns of the election, the poll books and any accompanying papers which may have been submitted to the election judges, such as certificates of registration from other precincts, affidavits made to avoid the effect of non-registration, or anything else of like nature, and that they put the ballots in the boxes, which should be sealed up and sent to the county clerk.

Among the statutes referred to as setting out the duties and powers of officers of election, there should be included Chapter 64 of the Laws of 1903, which might be of importance.

I return the draft of instructions herewith.