

## Opinion No. 12-921

July 19, 1912

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

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

### **ELECTIONS.**

Form of poll books for election of 1912 and manner of making returns.

### **OPINION**

{\*61} I have to acknowledge the receipt of your letter of yesterday on the subject of printed forms of poll books for the approaching general election, and as to how the returns of that election are to be made and canvassed.

First as to the returns of election, there are as you state four subjects to be voted upon at this election, and I am clearly of opinion that all of the returns must be sent to you and canvassed by the State Canvassing Board.

Section 2 of Article V of the Constitution provides that the returns of every election for state officers shall be sealed up and transmitted to the secretary of state who, with the governor and chief justice, shall canvass and declare the result of the election. The presidential electors and the member of congress, constituting two of the subjects of the next election, must be considered as state officers, and therefore the returns should be made to you. Moreover, as to the presidential electors, there is a specific provision in Section 8 of Article XX of the Constitution that the returns shall be made to and canvassed and certified by the State Canvassing Board, as provided in case of the election of state officers.

The third matter submitted to the people at the next election is as to the issuance of five hundred thousand dollars of bonds for the construction and maintenance of a system of state highways, and Section 8 of Senate Bill No. 161, which provides for the submission of this question, declares that the votes on the bond issue shall be counted, returned, canvassed and declared in the same manner and {\*62} subject to the same rules as votes cast for state officers, thus putting the returns of the election on the bond issue on the same footing as those referred to in Section 2 of Article V.

The fourth subject of the election is the submission of a constitutional amendment, and as you say, there are no constitutional or statutory provisions as to the manner of voting on the amendment or making any returns thereof. In the absence of any specific direction in the written law on this subject, I feel certain that the returns must be made to you as a member of the State Canvassing Board. An amendment to the Constitution is a state matter affecting the people of the whole state and should be dealt with by the

state authorities. Any different holding would make it impossible to hold any election whatever on the amendment, which would be violative of the intention of the Constitution and of the legislature which has directed the submission of the amendment.

You ask as to whether it would be necessary to have two sets of poll books, but as all the returns are to be made to the State Canvassing Board I can see no necessity for more than one set of poll books, and it would be very difficult, if not impracticable, for two clerks of election in large precincts to make four poll books, repeating the names of all persons voting in all of them.

You also ask as to the form and contents of the ballot on the constitutional amendment. We have absolutely no guide, either in the statutes or in the constitution as to the form and contents of such a ballot, or as to whether it should be a separate ballot from the one cast for the election of officers. Inasmuch as we have no provision, as may be found in many states, for an official ballot upon which shall appear the candidates of all parties and all questions to be voted upon, and as each party will have its own ballot, I recommend that the ballot for the vote on the constitutional amendment be separate from the other ballots, and that it contain a concise statement of the proposed amendment, with blank squares for marking the intention of the voter as being for or against the adoption of the amendment, substantially like the provision for such marking as was prescribed by the resolution of congress, commonly known as the Flood resolution. There should be also printed on this ballot, I think at both the top and the bottom, brief and clear instructions to the voter as to how the ballot should be marked.

The act providing for the submission of the bond issue to the people requires that that question shall be voted for upon the ordinary ballots at the election, as it says that all ballots at said election shall have printed thereon the necessary words to show the intention of the voter for or against the bond issue, with squares opposite the lines, in which the voter may make or stamp a cross to indicate how they vote.

Although the matter is not mentioned in your letter, I desire to make a practical suggestion, and that is that you should delay the printing of the poll books until the several political parties have made their nominations, so that you can print the names of the candidates in the poll books. This would tend to diminish the chances of error by election officers in making returns, and if you get the poll books out in time to be distributed to all the voting precincts, that is all that is incumbent upon you. If you have the poll books {\*63} in the hands of the various county clerks by the middle of October there would then be ample time for the books to reach every precinct.