

Opinion No. 16-1720

January 25, 1916

BY: H. S. CLANCY, Assistant Attorney General

TO: Cash Ramey, Esq., Mayor, Clovis, New Mexico.

Qualification of voter at a special city election.

OPINION

{*293} I am in receipt of your letter of the 23rd instant in which you propound six questions in regard to the special election to be held in the city of Clovis on January 31, and in regard to which you desire the opinion of this office. The questions are:

1. A man presents himself to vote and his name is not on the registration list. Can he make an affidavit and vote?

Answer: The election in question appears to be the one authorized by Sections 2940 to 2948, both inclusive, Codification of 1915. Section 2941 provides that the election, except as otherwise specified, shall be conducted in the same manner as provided by law for the governing of other municipal elections, and Section 3592, which applies to city elections generally, distinctly declares that no person whose name is not registered shall, on any account, be permitted to vote. Therefore, the answer to your question is that if a person's name does not appear on the registration book, he cannot vote, nor is there any method provided by law for the placing of his name upon the registration list at the time he presents himself and offers to vote.

2. A man presents himself to vote and is challenged as to his qualifications on the ground that he has not been in the state, county or precinct the required length of time. Can he make affidavit as to his residence, as above, and vote?

Answer: Answering this question, I am of opinion that Section 2006, Codification of 1915, is applicable. That section is as follows:

"When any person offers to vote, whose qualifications are not personally known to any of the judges, he may be examined under oath as to said qualifications and those who take a false oath shall suffer the penalty prescribed by law for perjury."

3. In case there is a slight mistake in the spelling of a man's name, or his initials are wrong, on the registration list, would this disqualify him?

Answer: An error in the spelling of a man's name, or where the initials are incorrect, does not necessarily disqualify him from voting. His constitutional right to vote cannot be denied by official failure or defect, but the judges of election should satisfy themselves

that the person who offers to vote is the same person whose name appears upon the registration list, although the name may be misspelled, or the wrong initials appear thereon.

4. Would a slight error in the man's address or place of residence disqualify him? You understand that many houses in Clovis are not numbered, and particularly in the outskirts of town it is difficult in some cases to even locate the streets so as to say what street a man lives on.

Answer: Most certainly an error in the voter's address or place {294} of residence, as set out upon the registration list, would not disqualify him.

5. In cases where houses are numbered, and the names of the streets are known, would a slight error as to a man's house number disqualify him to vote?

Answer: An error in the house number of a voter would not disqualify him, but if there was any question as to his identity, the same procedure should be adopted as set out in the answer to question No. 2.

6. In case a legal voter has registered, but on election day, when presenting himself to vote, he finds that, through error or design, his name has been omitted from the registration list in the hands of the judges. What remedy has he?

Answer: If a legal voter's name does not appear upon the registration list, he cannot vote, nor is there any law which provides a remedy for him. It is made the duty of every qualified voter to see that his name has been duly registered, and if it has not been so registered it is his duty to apply to the registration board and insist that his name be placed upon the list. Failure of a board of registration to perform its duties might result in the members thereof being prosecuted for a felony as provided by Section 3593, Codification of 1915.