

## Opinion No. 16-1861

August 29, 1916

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

**TO:** Mr. A. P. Anaya, Fort Sumner, New Mexico.

**As to color of ballots used in municipal election.**

### OPINION

{\*415} I must apologize to you for not having sooner answered your letter of the 11th of August, about which you spoke to me in the Plaza here during the Republican convention. I was then under the impression that my assistant had made an answer to your letter. but I found, upon inquiry, that he had not done so, not feeling entirely certain as to the law.

The question which you submit, and as to which you desire my opinion, is to the validity of an election held on August 8, 1916, for the election of officers of the village of Fort Sumner, in view of the fact that the ballots used by two different factions at that election were not of the same color, and you send with your letter a sample of each of the ballots.

The doubt as to the validity of this election must be founded upon the provisions in the general election law in Sections 1993 and 1994 of the Codification of last year. Section 1993 makes it the duty of the county clerk to provide printed ballots at the expense of the county for every election for public officers in which the electors, or any of the electors within his county participate, and it is further provided that the ballots shall be printed on the same kind of paper and of the same size. It is further provided that the printing and distribution of such ballots shall be made under the supervision of the chairmen of the county committees of the political parties of the county in which the election is to be held. Section 1994 provides that all tickets or ballot used at any general {\*416} election shall be printed on plain white paper, three inches in width and eight inches in length.

It is my view that these provisions were intended by the legislature to apply only to general elections, and not to elections in villages or cities. It is true that Sections 3537 and 3591 of the Codification of the statutes say, in substance, that municipal elections shall be conducted in the manner prescribed by law for the election of county officers, but I believe that means as to the way in which the election shall be conducted on the day of the election, and not as to matters preparatory to an election, such as the printing of ballots or registration of voters. Section 1994 is clearly limited to the subject of ballots used at general elections, and could not apply to a municipal election. There might be some room to argue that Section 1993 might apply to municipal elections, but taking the whole act from which that section was compiled, the original statute being Chapter 105

of the Laws of 1909, I believe that it should be properly held applicable only to general elections.

If this is correct then there is no violation of the statute in having the ballots printed on different colored paper, and I believe that the courts would hold the election to be valid, unless evidence could be produced to show that voters were imposed upon or misled, or in some way deceived by the difference in the color of the ballots.