

Opinion No. 25-3816

April 6, 1925

BY: JOHN W. ARMSTRONG, Attorney General

TO: Requested by: Hon. Forrest Fielder, District Attorney, Deming New Mexico.

No Person shall prevent Free Ingress to and Egress from any Building where an Election is being held.

OPINION

We quote your inquiry as follows:

"It seems that in prior elections held here, the opposing sides have used the plan of permitting their workers who have already voted to stand in line and hold places for others until they arrive to vote, yielding their places to anyone on their sides whenever the occasion presents itself and sometimes standing in line for hours without anyone else taking their place. The result of this practice in the last election apparently was that a good many did not get to vote at all and I have been asked whether or not this practice constitutes a violation of the election laws."

The practice you mention is clearly illegal and the authorities should put a stop to it if the law is to be enforced and electors are to be afforded free exercise of the right of suffrage. We cite you certain provisions of the laws of this State as follows:

"* * * and all elections for municipal officers shall in all respects be held and conducted in the manner prescribed by law in cases of county elections * * *." -- Sec. 1, Chap. 68, S. L. 1921.

"* * * No person, other than judges and clerks of elections, electors engaged in receiving, preparing or depositing their ballots, or one person designated to act as challenger for each political party whose ticket is printed upon the official ballot, shall be permitted to be within said enclosure. * * *" -- Sec. 12, Chap. 89, S. L. 1917.

"* * * no person shall remain in, or occupy, a booth or compartment longer than may be necessary to prepare his ballot, and in no event longer than five minutes, provided the other booths or compartments are occupied." -- Sec. 16, Chap. 89, S. L. 1917.

"No officer of election shall do any electioneering on election day. No person shall do any electioneering on election day within any polling place, or any building in which an election is being held, or within fifty feet thereof, nor **obstruct the entrances thereto, or prevent free ingress to or egress from said building.** It shall be the duty of election officers, sheriffs, constables and other peace officers, to clear the passageway and prevent such obstruction, and to arrest any person causing the same. * * * After

delivering his vote to the judges of election, the elector shall immediately retire to a distance of at least fifty feet from such polling place. Whoever shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction, shall be fined in any sum not exceeding one hundred dollars, and adjudged to pay the costs of prosecution." -- Sec. 23, Chap. 89, S. L. 1917.

"Every person who shall directly or indirectly use * * * duress or any fraudulent devise, contrivance or scheme, impede or prevent the free exercise of the franchise by any elector, shall, upon conviction thereof, be punished by fine not exceeding five hundred dollars and by imprisonment for not less than two months nor more than one year." -- Sec. 2054, Code 1915.