

Opinion No. 36-1332

March 11, 1936

BY: FRANK H. PATTON, Attorney General

TO: Hon. Thomas J. Mabry, District Attorney Albuquerque, N.M.

{*106} Your letter dated March 2, 1936, requesting our opinion upon a number of questions relative to the new election code (Chapter 147, Laws of 1935) is hereby acknowledged.

We will endeavor to answer your questions in the order presented.

Regarding your first question under Section 2 of Chapter 147 wherein is provided, at page 375, that the County Clerk "shall certify said copy or copies to be full, true and correct copies, under his hand and seal of his office." It occurs to us that there is to be a copy of the poll books only in the event of any election district having been divided and then, obviously, only a list of the names appearing therein.

We call your attention to the beginning of the paragraph at the top of page 375 which reads as follows:

"Where any precinct or election district is divided as required by the provisions of this section, it shall be the duty of the county clerk to make a true and correct copy or copies of the poll book * * * etc."

Your attention is further directed to the first paragraph of Section 2 at page 375 where it is specifically provided that the Board of County Commissioners shall divide every precinct and voting division in their respective counties where more than four hundred (400) votes were cast at one polling place at the last preceding general election.

Obviously it was not intended by Chapter 147, and is not within its purport or scope to cause a copy of the poll books except in the event that there has been a division of the precinct since the last general election.

In view of the foregoing it is our opinion that only in the specific instance of a division of the precinct or voting division shall there be any copy of the poll books.

Section 2 of Chapter 147, Laws of 1935, must of necessity be construed in conjunction with Section 11 of said Chapter 147. (See page 385).

When two sections are construed {*107} together it must be preserved, if possible, the manifest intent of each. Said section 2 provides in part as follows: (Page 375).

"It shall be the duty of the board of registration in each of the precincts or election divisions created by such order to transcribe into the three registration books hereinafter provided for the names of all electors appearing on the poll book or certified copy of the poll book known by said registration board to be residents and qualified electors of the precinct or election division for which they have been appointed to make a new registration. It shall be the further duty of such registration board to complete the registration for the precinct or election division for which they have been appointed in accordance with **the further provisions relative to registration as set forth in the election code.**"

Section 11 of said Chapter 147 provides in part as follows: (See page 386).

"The registration board shall copy into the registration books, the residence and street address appearing on the poll book, except where said street address is known to the board or is shown to have been changed, and in such event, the board shall enter opposite the name of the registrant in the proper column the correct street address of such registrant. Street addresses must be entered where available to the registration board. As to the names copied from the poll book, the board shall note the words 'poll book' opposite each of such names in the column headed 'Notations'."

In view of the foregoing, it is our opinion that the law intends that only a full, true and correct copy of the list of names shown in the poll book as having voted at the last preceding general election should be made out, including the correct street address of such registrants, whenever same is available to the registration board and also including a notation showing the source from which said names were derived, i.e., "poll book."

Your query number 2 as to whether or not a registration board in copying from the old poll books shall copy the names as they appeared therein regardless of whether or not they are correct or whether such board shall, to the best of its ability or such knowledge as it may have, determine, so far as it is possible, the correctness of the designated and registered names in the poll books and in copying from the old poll books make the proper and necessary changes.

It is our opinion that you are correct in the assumption that the registration board shall arrange such prefixes as it knows to be correct even though same necessitates, in many cases, the making of a correction in the act of copying.

This opinion is based upon what we consider to be the general scope purport and intent of Chapter 147, Laws of 1935, when construed as a whole. Before any particular section or subsection of Chapter 147 can be construed, the general purport, scope and purpose of the entire chapter must be ascertained, then the particular section or subsection must be construed in accordance and harmony with the general intent of the entire chapter. Using this as a proper basis, we find on page 385, under Section 11:

"* * * The Board of Registration shall enter * * * names * * * except those known to the board to have died, become disqualified, or not to be qualified electors in said precinct or election district."

The aforesaid shows that the general purport and intent of the legislators in framing Chapter 147 and in particular Section 11 thereof, was to give the registration board the prerogative of making such true entries as are necessary and which may become necessary because of the changing status of individuals and because of the general vicissitudes of life.

{*108} In view of the foregoing, it is our opinion that the registration board not only has the authority to, but that it should, make such changes in the copying from the old poll books as the exigency of the case demands.

Relative to your query number 3. While it is true that these registration requirements are made mandatory (Section 8, Chapter 147), yet we see nothing contained therein which would conflict with nor prevent the correction as provided under Section 33, Subsection (10) page 409. We believe that this is true for the reason that Subsection (10) provides for a correction of errors in the registration book and it provides for such correction to be made upon the poll book, which takes place at the time of voting.

The registration of names is usually performed entirely by members of the registration board and not by the voters or electors themselves. Thus, if there is an error in the registration book of any name entered therein, it may reasonably be said that such error is not the fault of the voter whose name is registered therein, but the fault of the one who entered it. Therefore, it is only proper and within the furtherance of our election code that power be given to correct such mistakes when they are apparent or when the occasion demands that a correction be made on account of the change of status of the individual.

It is the opinion of this office that it was the general intent of the legislators in framing said Chapter 147 that no qualified voter should be prevented from exercising his franchise by reason of an error for which he was not nor could not have been responsible. To hold otherwise would violate an individual's fundamental rights guaranteed under our State Constitution as well as the Federal Constitution.

In view of the foregoing, it is our opinion although a married woman is not registered with the proper prefix, she may nevertheless cast her vote since the statute provides that a correction may be made if such error is apparent.

We further call your attention to Section 33, Subsection (10), Paragraph 2, page 409. Same provides that a correction may be made in the poll book by writing "the word 'error' over the erroneous entry and add the initials of the official who makes the erroneous entry."

Trusting the above will be of aid to you in construing the new election code, I am