

Opinion No. 36-1342

April 2, 1936

BY: FRANK H. PATTON, Attorney General

TO: Mr. David W. Carmody, Assist. District Attorney, Santa Fe, New Mexico.

{*111} Your letter of March 31st inquires whether or not the invalidation of the absentee ballot law by the Supreme Court, automatically throws us back to the 1927 absentee ballot law, or whether or not voters absent from their precinct will have any way of voting at the coming general election.

You, of course, know that the opinion of the Supreme Court does not become final until twenty days after its rendition and that during this period of time motion for rehearing may be filed, in which event the matter would rest at status quo for perhaps several weeks.

Assuming, however, that the opinion will become final as presently written and without any change being made in the decision, it is my belief that the 1927 Law would be in effect.

The 1933 Law is amendatory of the 1927 Law and the opinion only makes an historical reference to the 1927 Law. The 1933 Law being held to be unconstitutional simply means that the Act is void and being void it stands as if it had never been passed and is of no effect whatever.

This being true, it could in nowise affect the 1927 Law.

While I am not called upon to answer this question at this time I anticipate that it will arise in the near future and I, therefore, do not hesitate to say that in view of the reasoning of the Supreme Court in the present case on the 1933 Law, it is my belief that if and when the 1927 Law is challenged that the court will also hold that law to be unconstitutional.