

Opinion No. 36-1478

September 18, 1936

BY: FRANK H. PATTON, Attorney General

TO: Mrs. Elizabeth F. Gonzales, Secretary of State, Santa Fe, New Mexico.

{*137} In accordance with your request under date of September 17, 1936, we herewith submit our opinion upon the following questions submitted to Mr. John E. Miles, Democratic State Chairman, by Mr. E. T. Hensley, Jr., of Portales:

"1. The manner of selection and date of appointment of Judges of Election, and Counting Judges of Election.

a. The number of Judges of Election and Counting Judges of Election.

2. The manner of selection and date of appointment of Counting Judges and Counting Clerks.

a. Number.

3. The manner of selection and date of appointment of Poll Clerks.

a. Number."

For convenience we will arrange our answers to the questions in the order that they are asked, as follows:

{*138} 1. In all precincts three (3) Judges of Election are to be appointed by the Board of County Commissioners on the third Monday next preceding any election. Only in precincts or election districts where more than two hundred (200) votes were cast for Governor at the last preceding election shall there be appointed three (3) counting judges at the same time by the Board of County Commissioners. For more detailed information regarding the manner of selection, see Section 31, Chapter 147, Laws of 1935 (Section 314, Election Code).

2. The second question, so far as it relates to the appointment of counting judges, has been answered above. I find no statutory provision now in force providing for the appointment of counting clerks. Section 41-315, 1929 Code, which provided for the appointment of such counting clerks has been repealed by Section 67, Chapter 147, Laws of 1935. I have carefully searched the new election law adopted by the 1935 Legislature but can find no provision relating to the appointment of counting clerks. There are various references in the law to counting clerks and it was apparently the intention of the Legislature to provide for their appointment but so far as I have been able to find, no such provision was made. Section 39, Chapter 147, Laws of 1935

(Section 331, Election Code), provides that it shall be the duty of the two poll clerks "to assist * * * in counting and tallying the ballot in voting divisions which do not have counting judges and clerks." Since, so far as I can find, no provision has been made for the appointment of counting clerks in any voting divisions, it would appear to me that it would be the duty of such poll clerks to assist in counting and tallying the ballots in all voting divisions to the extent that this would not interfere with their other duties.

3. Two Poll Clerks are appointed by the Board of County Commissioners on the third Monday next preceding the election for each precinct and election district in the county. Two (2) alternates are also appointed by the Board at the same time. For more detailed information regarding the matter of selection, I refer you to Section 41-329, 1929 Compilation. As to the manner of filling vacancies in the office of Poll Clerks and as to the duties of Poll Clerks, I refer you to Section 41-330, 1929 Compilation, and Section 39, Chapter 147, Laws of 1935 (Sections 330 and 331, Election Code).

Trusting that the above satisfactorily answers the questions submitted, I am

By QUINCY D. ADAMS,

Asst. Atty. General