

Opinion No. 37-1760

September 16, 1937

BY: FRANK H. PATTON, Attorney General

TO: State Canvassing Board c-o Mrs. Elizabeth F. Gonzales Secretary of State Santa Fe, New Mexico

{*159} This office has been receiving many telephone calls and letters inquiring whether more than a majority of the votes cast at the special election to be held on September 21st is necessary in order to place in effect Constitutional Amendment No. 1, which is commonly designated as the Absentee Ballot Amendment.

Due to the importance of this question and in order that those interested may be fully informed, I wish to make the following comments.

Section 1 of Article 7 of the Constitution of New Mexico sets forth the qualifications of voters in this state, among other things, and provides that the legislature shall have the power to require registration of qualified electors as a requisite for voting and shall regulate the manner, time and place of voting.

Section 3 of said Article 7 provides, in part, that the provisions of Section 1 of said Article 7 shall never be amended except "upon a vote of the people of this state in an election at which at least three-fourths of the electors voting in the whole state and at least two-thirds of those voting in each county of the state shall vote for such amendment."

In addition to this, I find that Article 19 of the Constitution in Section 1 thereof provides the manner for amendment of the State Constitution.

After the amendment has been proposed in regular manner by the legislature, certain duties in connection with the publication of such amendment before the election are imposed upon the Secretary of State.

The said section then provides that if the same be ratified by a majority of the electors voting thereon such amendment shall become a part of the Constitution and the section then continues with this language: "provided, that no amendment shall apply to or affect the provisions of Sections 1 and 3 of Article 7 hereof on elective franchise * * * unless it be proposed by vote of three-fourths of the members elected to each house and be ratified by vote of the people of this state in an election at which at least three-fourths of the electors voting in the whole state and at least two-thirds of those voting in each county in the state shall vote for such amendment."

The "Section 1." above mentioned is the same "Section 1." of Article 7 to which reference was first made.

In view of the language used in the two constitutional provisions above mentioned, it is therefore my opinion that in order for said absentee ballot amendment to carry, at least three-fourths of the electors in the whole state must vote for such amendment and at least two-thirds of those voting in each county must vote for such amendment, and a mere majority of the votes cast is, therefore, insufficient to place said amendment into effect.

{*160} Trusting the foregoing will clarify this matter in the minds of the voters, I am,