

## Opinion No. 39-3230

August 5, 1939

**BY:** FILIO M. SEDILLO, Attorney General

**TO:** Mrs. Jessie M. Gonzales, Secretary of State, Santa Fe, New Mexico.

{\*90} I have given consideration to your oral request for opinions on the matters detailed in the various letters which you handed to me from clerks and other registration officials, and I will attempt to answer the various questions without going into detail as to my reasons for such conclusions.

1. In my opinion the registration clerks are to be paid for all registration affidavits which are filed by the county clerk, and the registration board should certify the proper number for payment when determined by themselves or their clerk.
2. Section 25 of Chapter 152, Laws of 1939, the registration act, provides that registration clerks shall "each" receive "as compensation the sum of ten cents (10c) for each person so finally registered." The Registration Director, Miss Hoffman, issued instructions to the effect that the two clerks "should canvass together." I think this is a reasonable construction of the statute, and it follows that each of the clerks is to be paid ten cents (10c) in rural districts, and five cents (5c) in municipal corporations, for each person registered.
3. The county clerk is directed by Section 8 of the above act to file the registration affidavits "if in proper form," and she determines whether the affidavits are "in proper form" before filing. The statute makes no other provision for inspection by any particular official to discover errors in the affidavit; but since the registration clerks are to be paid only for voters so properly registered as to be entitled to filing, the registration board personally or through its clerk must be advised before payment with respect to the sufficiency of the registration affidavits turned in, and they or their clerk should inspect the affidavits for that purpose. Clearly, since the clerk must do this also as county clerk to determine whether they are entitled to filing, the clerk is the proper person to do so as such county clerk and for the board of registration as its clerk. As a practical matter, the one determination should serve both purposes, and the registration clerks should be paid for all registrations entitled to filing and filed by the clerk, and for none others.
4. When a person offers to register in person with the county clerk, the county clerk cannot accept registration by married women in any manner except under the name of the husband as required by Section 6 of the act; but if registration affidavits are received by mail or are turned in by registration clerks wherein married women have registered in their own names, they should be accepted for filing by the county clerk, as this does not vitiate the registration affidavit. This has been held by this office in a prior opinion to your office.

5. Whether a registration affidavit is executed with the full name of the voter, or with only his initials, it must be accepted for filing by the county clerk when received by mail or turned in by a registration clerk. Likewise the registration by a widow or a divorced woman in her own name or the name of her husband, or with the initials of her husband, is entitled to filing.

6. The name of the elector as printed at the top of the registration affidavit is as much a part of the affidavit, under the statute, as his signature. If instructions were followed, the registration clerks printed the full name of the elector as given to them. In my opinion the proper and practical manner of typing the name at the bottom of the registration affidavit is as printed at the top of the affidavit, and then **in parenthesis** underneath there should also be typed the name as signed to the affidavit, when different from that printed at the top. This will also help in cases where the registration clerks printed the name of a married woman in the proper manner but she signed under her given name. By having both names printed, the signature in parenthesis, the registration affidavit may be more easily located by the election judges. The purpose of the law is to secure legal voters their right of franchise, and this right should not be lost by mere clerical errors in form. The original affidavit will be before the judges of election, and in cases of doubt they can require the voter to make the signature and compare it with the original before permitting a voter to vote where his manner {\*91} of signing the same makes it ambiguous.

7. The statute and the affidavit forms require considerable information for the purpose of identification, to assist the election judges and to insure that persons masquerading in the name of absent voters may not cast a ballot in the name of such absent voter; and it should be at all times insisted that as much information as possible be given for that purpose. However, so long as the voter gives his name and swears to the fact that he is or will be at the time of the ensuing election at least twenty-one years of age and a resident of the state, county, district and municipality for the requisite time, and executes the affidavit by signing and swearing thereto, the affidavit in my opinion is in proper form and should be filed. Only a lack of any one of the above requisites would vitiate the registration affidavits. The precinct and election district, and the municipality if any, must of course be shown to make the registration valid.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.