

Opinion No. 39-3281

September 18, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mr. Jose M. Otero, County Clerk, Los Lunas, N. M., Attention: Mr. Santiago Marquez, Deputy.

{*106} In your letter of September 15th you ask the following questions in connection with the registration matters.

1. "Can a County Clerk sign the affidavits in blank and have a reliable person fill them out in any precinct, or may he authorize some person to act as a Deputy County Clerk and have the registration affidavits filled out in the various precincts at any time?"
2. "Is it permissible for a County Clerk to have the affidavit blanks in his possession after office hours and if he may solicit registration at any time?"

The questions will be answered in order:

Section 25 of Chapter 152 of the Laws of 1939, provided for the purpose of obtaining the first permanent registration, the Clerk of Registration therein provided for in each precinct or election district, between the first Monday of July and the thirty-first day of July, 1939, are to make a thorough and complete canvass of all qualified electors in their precinct or election district and register all unregistered qualified electors in the manner therein provided by going from house to house.

Section 15 of said Chapter 152 of the Laws of 1939 provides as follows:

"The county clerk shall receive affidavits of registration at all times except that he shall close registration at five o'clock P. M. on the 30th day preceding any primary or general election and shall reopen such registration on the Monday following such election."

Section 10 of Chapter 152, Laws of 1939, is another provision found which relates to registration and provides that the Board of Registration, on the first Monday of June of each even-numbered year, for the purpose of registration of electors at specified times and places, other than the office of the county clerk, shall appoint in each precinct or election district of the county two registration clerks who shall be appointed to act for a period of not more than two days and shall commence their duties on the second Monday of July in each even-numbered year.

There being no provision to be found in Chapter 152 of the Laws of 1939 other than the foregoing, and due to the fact that Section 34-428 of the New Mexico Statutes, Annotated, 1929 Compilation, provides as follows:

"Whenever the total cash receipts on account of fees collected by any of the county clerks in any county within this state exceed the amount of salary, deputy hire and expenses now allowed by law, one-half of the amount of such excess may be expended, or so much thereof as may be necessary in behalf of employing additional deputies; such additional deputies herein authorized to be employed shall not be employed except by consent and approval of the board of county commissioners and then only upon recommendation of the state traveling auditor, who shall first certify that he has investigated the conditions and requirements of such county clerk and that the employment of additional deputy or deputies is essential and necessary to the efficiency of the public service. Provided, further that the basis for the employment of such additional deputy hire shall be upon the amount of such excess revenue derived on account of fees collected for the three months preceding such employment of additional deputy or deputies, {*107} and the amount of revenue derived shall be ascertained quarterly and the additional deputies authorized determined accordingly.

"Provided, further, that the salary of such additional deputies shall be fixed by the respective boards of county commissioners and the salary of no such additional deputy shall exceed seventy-five dollars a month; and such salaries shall be paid in the same manner as now provided by law for the payment of county officers."

Section 33-3401, New Mexico Statutes, Annotated, 1929 Compilation, as amended by Chapter 59 of the Laws of 1939, reads as follows:

"That all county officers of the various counties in New Mexico shall establish and maintain their offices and head-quarters for the transaction of the business of their respective offices at the county seat of their respective counties and shall there keep all the books, papers and official records pertaining to their respective offices; Provided, that such offices shall be provided for such officers at the expense of the respective counties."

I am of the opinion that a clerk cannot sign the registration affidavits in blank and have a reliable person fill them out in any precinct, and that the county clerk has no right whatever to name persons to act as deputy county clerks and have registration affidavits filled out in the various precincts at any time. Further, it is not permissible for the county clerk to solicit registration outside of his office. The county clerk may, however, receive affidavits of registration at all times in his office except that he shall close registration at five o'clock P. M. on the thirtieth day preceding any primary or general election and shall reopen such registration on the Monday following such election.