

Opinion No. 39-3359

December 21, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mr. David S. Bonem, City Attorney, Tucumcari, New Mexico.

{*125} In your letter of December 19, you make certain inquiries about municipal elections with reference to the recently enacted permanent registration law.

You ask whether in registration for municipal elections you should follow the provisions of Section 90-610, New Mexico Statutes, Annotated, 1929 Compilation, or whether you should follow the provisions of Chapter 152, New Mexico Session Laws of 1939.

This office has heretofore held (See Opinion No. 3239 enclosed herewith) that it was the intent of the legislature to substitute Chapter 152, Laws of 1939, for the registration provisions contained in Section 90-610 of the 1929 Compilation.

This office has, likewise, heretofore held (See Opinions No. 3235 and No. 3239 enclosed herewith) that Section 15 of Chapter 152, Laws of 1939, providing that the County Clerk receive no affidavits of registration for a period of thirty days before any primary or general election, does not apply to and has no reference whatever to municipal elections.

It has been held in these Opinions that at municipal elections electors may continue to register at all times with the County Clerk and be included in the Registration Lists delivered by the County Clerk to the City Clerk up to three days before the municipal election. They may continue to be registered up until election day, except that their names will not be in the Registration List handed to the City Clerk, and those electors who register after delivery of Registration Lists by the County Clerk to the City Clerk may vote only as shown by Instruction No. 11 at page 316, Section 5, Chapter 153, Laws of 1939.

You also state that your municipality is divided into four wards, but that there are five voting precincts or districts for general election purposes in the municipality, and that the boundaries of the voting precincts or districts and the boundaries of the wards do not coincide, and you inquire whether it will be necessary for the City Clerk to transfer the names as furnished to him by the County Clerk and separate them into the four wards.

I do not believe that such a transfer of names is necessary or proper, and the law contemplates no such transfer. The contrary is contemplated and intended.

Section 24 of Chapter 152, Laws of 1939, provides that "the County Clerk shall deliver to the City Clerk of any municipal corporation the original affidavits of registration for **all**

precincts and election districts, **in whole or in part**, within such municipal corporation." In other words, even in municipalities where a general election precinct or district is partly within and partly outside of the municipality, the City Clerk receives the complete registration book for that general election voting precinct or district.

The same Section 24 then provides that the Registration List for municipal elections shall be "such original affidavits of registration as **show on their face** that the elector is a resident within the limits of such municipal corporation."

On the third line of the registration affidavits, as used in this State and adopted under Section 3 of said Chapter 152, will be found two sub-divisions, namely, one indicating residence of the elector outside the municipality, and one indicating residence of the elector within the municipality.

In municipalities, therefore, where a general election voting precinct or district is both within and without the boundaries of a municipality, the election judges in this particular precinct or district in a municipal election will necessarily have a registration book containing electors residing both within and without the municipality, but only those whose affidavit of registration **shows on its face** that they reside within the municipality will be entitled to vote at municipal elections.

To carry out this general idea, the legislature, along with said Chapter 152, enacted Chapter 99, Laws of 1939, which provides that "in all municipal elections the same voting divisions shall be used as are used at general elections." Said Chapter 99 further provides that "if any such voting division be partly within and partly without the corporate limits of any municipality, then, and in that event, that portion of such division as may be within the municipal {^{*}126} limits shall constitute a voting division for the purpose of municipal elections."

The same Chapter 99 carefully avoided any disruption of the "ward" set-up in municipalities and provided as follows:

"Provided, however, that nothing herein contained shall be construed as changing existing law as to wards or other municipal sub-divisions for the purpose of nominating aldermen, trustees, councilmen, or like municipal officers."

In other words, city councilmen may still be residents of different wards and be nominated from different wards, but at the municipal election of those officers, they are voted upon by all the qualified electors in the municipality, and in that election, the same voting divisions are to be used as are used at general elections.

You may readily see, therefore, that the fact that ward boundaries and general election voting precincts and districts overlap becomes immaterial, nor does it matter that part of a general election voting precinct or district be partly within and partly outside of a municipality.

Trusting the foregoing sufficiently answers your inquiry, I am,

By: FRED J. FEDERICI,

Asst. Atty. Gen.