

Opinion No. 42-4159

September 25, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Honorable John E. Miles Governor State of New Mexico Santa Fe, New Mexico

{*253} You have requested an opinion of this office relative to the powers, duties and procedures of the State Canvassing Board.

In answer to this inquiry I submit the following Section 815 of the Election Code (Special Session Laws of 1938, Chapter 2, Section 15) provides:

"The county and state canvassing boards shall canvass and certify the results of each party primary election as and in the same manner required to be done at all general elections the County Canvassing Board within six (6) days and the State Canvassing Board within fifteen (15) days after the primary. * * * *"

Section 356 of the Election Code (Laws of 1939, Chapter 153, Section 9) provides that the State Canvassing Board shall meet in the State Capitol and declare the result of the election for United States Senator and Representative {*254} in Congress, State officers chosen by the electors of all the counties in the State, and declare the result of the election for judicial district officers and members of the Legislature chosen by the electors of more than one county.

This section further provides that the canvass be made

"* * * * from the returns certified and transmitted to the Secretary of State by the elections officers of the several precincts and election districts and issue proper certificates of election. * * * *"

Section 357 of the Election Code (Compilation 1929, Section 41-357) provides:

"The State Canvassing Board shall carefully examine all of said returns, and if any discrepancy, omission or errors appear on the face of the returns for any precinct or election district, it shall immediately issue a summons directed to the election officers for said precinct or election district commanding them to appear forthwith before said State Canvassing Board to complete or correct said returns. The Board shall appoint a special officer to serve said summons, which said officer shall be paid for such service fees and mileage at the same rates as provided by Law for service of summons in civil cases."

Section 358 of the Election Code (Compilation 1929, Section 41-358) provides:

"The State Canvassing Board shall carefully examine the certificates issued by the County Canvassing Boards, and if any discrepancy, omission or error appears on the

face of the certificate from any county, the State Canvassing Board shall immediately issue its summons, directed to the members of such County Canvassing Board and the Clerk of such county, commanding them forthwith to appear before it, and complete or correct said certificate."

Section 828 of the Election Code (Special Session Laws of 1938, Chapter 2, Section 28) provides:

"* * * In the event of a recount of ballots cast for any office other than a county or precinct office, the said Board of County Commissioners, acting as a canvassing board, shall certify the result of said election in said county as shown by the said recount to the State Canvassing Board, and the State Canvassing Board shall be bound thereby. * * *

"Such State Canvassing Board shall certify the result as shown by the returns from the several counties as amended by such recount, and the determination of said state canvassing board as to the result of said election shall be final and binding upon all the candidates in said election.

"It is further provided that the provisions herein made are exclusive of all other remedies and the Courts of this State shall have no jurisdiction to overturn, change or modify such decision, the subject matter hereof being declared by the Legislature to be a political question and not a judicial one."

Trusting that the foregoing will be of some assistance to you, I remain

By HARRY L. BIGBEE,

Asst. Atty. General