

**Opinion No. 43-4345**

July 27, 1943

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Honorable J. D. Hannah, State Auditor, Santa Fe, New Mexico

We have your letter of July 27, 1943, requesting an official opinion of this office concerning a matter of vital importance to the majority of the voters of Guadalupe County.

The question involved concerns the correct interpretation of Section 56-219 of the New Mexico 1941 Compilation.

It is fundamental that a statute must be construed according to the legislative intent. Section 56-219 (4) provides:

"When the person so registered has not voted at the two last preceding elections, as shown by the notation of election officials on his affidavit. \* \* \*"

We note from this wording that the Legislature undoubtedly contemplated that the certificates of registration would not be cancelled unless a person had not voted in the last two preceding general elections. It was further contemplated that whenever a voter should cast his ballot a proper notation should be made by election officials. It could not have conceivably been contemplated that election officials, by not properly being informed concerning all of their duties, should, by such inadvertence, cause the cancellation of registration affidavits due to no negligence of the individuals who are properly registered. To so construe the law would defeat the purpose of our permanent registration statute. This purpose is plainly shown by the fact that notice must be given to the individual before his registration is cancelled.

Therefore, it is my opinion that whenever the fact is brought to the attention of the Board of Registration that a person actually cast his ballot at one of the last two preceding general elections, the Board of Registration will not have power to cancel the registration of such person, even though the election officials failed to make a proper notation on his affidavit. The Board of Registration, in considering these matters, may give great weight to the list of persons contained in the poll books, which is entitled to a presumption of accuracy and, if a person's name appears in a poll book for one of the last two preceding general elections, unless it is shown by positive proof that such person did not in fact vote, he must be presumed to have cast his ballot and his registration should not be cancelled when such facts are brought to the attention of the Board of Registration.

By HARRY L. BIGBEE

Asst. Atty. Gen.