

Opinion No. 43-4359

August 6, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Virginia A. Kittell, County Clerk, Aztec, New Mexico

In your letter dated August 4, 1943, you make inquiry concerning cancellation of the affidavit of registration relative to a person who has not voted in the last two general elections, and also persons who have died.

Ordinarily, this office does not give opinions to County Officials, and we suggest that you obtain an opinion from your District Attorney in the first instance, and if he has any questions which he wishes to refer to this office, we shall be glad to answer his questions. However, due to the importance of your question at this time, I shall proceed to answer the same.

Section 56-219, sub-section 1, of the New Mexico 1941 Compilation authorizes the Board of Registration to cancel the affidavit of registration when they know of the death of the person registered. If the Board has information of the death of a registered voter, they may cancel the affidavit of registration. Since death certificates are required to be filed in the County Clerk's Office, such records should be reliable in making a check against the registration certificates.

Section 56-219, sub-section 4, of the New Mexico 1941 Compilation also provides for the cancellation of, the affidavit of registration when the person so registered has not voted at the two last preceding general elections, as shown by the notation of election officials on his affidavit. This section further provides:

"Before such affidavits of registration shall be actually cancelled, notice of such proposed cancellation shall be mailed to the last known address of such elector at least ten days prior to cancellation."

The statute does not require that this notice be given by registered mail with a return receipt requested. However, that would be the safest procedure to follow in order to be sure that the registered voter actually receives the notice.

For your information, I am enclosing a copy of Opinion No. 4345, dealing with the question of voters who have actually voted, but as to which a notation does not appear on the affidavit showing that the person so voted.

By C. C. McCULLOH,

First Asst. Atty. General