

Opinion No. 44-4530

June 19, 1944

BY: EDWARD P. CHASE, Attorney General

TO: Mr. John C. Peck, County Clerk, Roswell, New Mexico

In your letter dated June 15, 1944 you refer to Section 56-219 of the 1941 Compilation regarding cancelation of registration affidavits, and inquire whether it would be legal to not cancel affidavits in which the person is of an age eligible for war service although the affidavits show that he failed to vote in the last two general elections.

This section provides in part as follows:

"The board of registration shall, commencing on the 3rd Monday of July preceding any general or primary election, cancel the affidavit of registration:

(4) When the person so registered has not voted at the two (2) last preceding general elections, as shown by the notation of election officials on his affidavit."

The law, by using the word "shall", would appear to be mandatory and there is no provision for making an exception in the case of servicemen. Certainly the fact that a person is of an age making him eligible for military service would not be sufficient to prevent cancelation since there may be any number of persons of military age who are not actually in military service.

If the board of registration has knowledge that a person is in the military service, they would be justified in making up a list of such persons and presenting a petition to the district court and let the district judge decide whether or not such names should be canceled from the registration in view of the circumstances.

Otherwise, in my opinion, the statute should be complied with as to persons not known to be in the military service. There is justification for such procedure in view of the fact that in the last election there was a federal law for absentee voting and anyone in the military service could have voted by making application to do so in conformity with the federal law.

By C. C. McCULLOH,

First Asst. Atty. General