

Opinion No. 44-4566

August 28, 1944

BY: C. C. McCULLOH, Attorney General

TO: Miss Eva Tatum, Lea County Clerk, Lovington, New Mexico

We are in receipt of your letter of August 22, 1944 in which you ask several questions concerning registration.

By your first question you ask whether or not the law in regard to cancelling affidavits of registration under Section 56-219 of the 1941 Compilation is mandatory. I am not certain whether your question involves only the duty of the Board to meet and act or also includes the duty of the Board to cancel the affidavits of registration of the enumerated persons. Section 56-219 provides in part as follows:

"The Board of Registration **shall**, commencing on the third 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 last preceding general elections as shown by the notation of election officials on his affidavit."

Due to the use of the word "shall" in the above quoted section, it is certainly mandatory that the Board of Registration meet and act. If the Board finds that any of the first three grounds exist, that is to say that the registered person is dead, insane or convicted of a felony, the Board could have no discretion but to cancel the affidavit of registration since that person would not be qualified to vote. As to the fourth ground which is cited above, this office has taken the position that it is not mandatory upon the Board to cancel the affidavits of registration in all cases. It is apparent that the purpose of this ground is as follows:

If a person has not voted at two general elections, this failure to vote is evidence that the person is no longer a resident or has died. Thus, if the Board has evidence before it showing that the registrant is still a qualified resident voter, it would not be fulfilling the purpose of the statute in cancelling the registration affidavit but would be doing a useless thing since the person could immediately re-register. Hence, it is our opinion that it is not mandatory that the Board cancel the registration in all such cases. The office has further taken the position that the neglect of the election officials to note on the affidavit that a person has voted when the person has in fact voted cannot be relied on to cancel the registration. You will please find enclosed copies of opinions dealing with these two questions.

You ask whether or not the term "general election" as used in Section 56-219 (4) includes primary and municipal elections. Section 1, Chapter 152 of the Laws of 1939 which is compiled as Section 56-203 of the 1941 Compilation provides that:

"The word 'election' shall be construed to mean and apply to all primary elections, general elections, special elections and municipal elections."

Thus, when the words "general election" are used in this chapter, it is my opinion that they cannot be construed to mean anything except general elections.

You ask whether a transfer of registration from one precinct to another within the county may be construed as a renewal of registration. Transfer of registration within the county is provided for by Section 56-215 of the 1941 Compilation. This section provides that: The registrant may make application for transfer; that the county clerk upon receipt of such application shall remove the original affidavit of registration from the precinct binder where it appears and place it in the precinct binder to which the registrant requests to be transferred. This procedure is entirely different from that used in transferring registration from one county to another. In the latter case the procedure is governed by Section 56-216 where the registrant must register in the new county and make application to cancel his registration in his former county. Thus, it is seen that two distinct procedures exist. In changing from one county to another the registrant cancels his old registration and re-registers, while in changing from one precinct to another within the same county no new registration is made, the old registration merely being transferred.

It is, therefore, my opinion that the transfer of registration from one precinct to another within the county may not be construed as a renewal of registration or re-registration. However, this is a fact which might be considered by the Board of Registration in determining whether or not to cancel the registration under Section 56-219 (4).

By ROBERT W. WARD,

Asst. Atty. General