

LAW LIBRARY

ARIZONA ATTORNEY GENERAL

Opinion No. 64-40-L
R-157
October 1, 1964

- REQUESTED BY: The Honorable ISABEL BURGESS
State Representative - Maricopa County
- OPINION BY: ROBERT W. PICKRELL
The Attorney General
- QUESTIONS:
1. If the chairman of the county central committee of the minority political party submits a list of qualified voters to the Board of Supervisors at least one week prior to appointment, is it mandatory that the Board of Supervisors appoint these minority party electors as election board and tally board workers?
 2. If the Board of Supervisors appoints a tally board pursuant to A.R.S. § 16-771, is it mandatory that the minority political party be represented on such tally board?
 3. May an election board or tally board member leave the polling place either while the polls are open or while the ballots are being counted?
 4. Once the polls are closed and the tally of ballots started, can the tally of ballots be continued from time to time, or must the tally be a continuous, uninterrupted procedure?
 5. Once the polls are closed and the tally of ballots commenced, who, besides election board and/or tally board members, marshal, and party representatives, is allowed inside the railing of the polling place?
 6. Must the election and tally boards be a continuing board, or can it be operated in shifts? Once a person serving on an election or tally board leaves the premises, can he then return and resume this duty? Are

new members of the election and tally boards permitted to come in to replace those who might wish to leave or be excused permanently?

- ANSWERS:
1. Yes
 2. Yes
 3. No
 4. See body of Opinion
 5. See body of Opinion
 6. See body of Opinion

Regarding Question No. 1 - the Attorney General has issued two recent opinions which are specifically in point: Opinion No. 62-23 of May 21, 1962, and Opinion No. 64-35-L of September 22, 1964. In summary of these opinions, it is mandatory that the Board of Supervisors appoint minority party electors to the election and tally boards when requested by the chairman of the county central committee of said minority political party, if said request is made within the statutory time period.

The cited opinions, supra, further indicate that the tally board must also have minority party representation if so requested by the particular county central committee. A.R.S. § 16-771 states in part ". . .The tally board. . . shall be appointed with the same qualifications and on the same basis as is set forth in this section." The rest of the section, as pointed out in the first paragraph, does provide for said minority representation on the election board.

Since the same reasoning can be applied to both questions Nos. 3 and 4, as a matter of convenience we will answer them together. A.R.S. § 16-941 states: "As soon as the polls are closed and the last ballot has been deposited in the ballot box, the election board or the tally board shall immediately count the votes cast. The count shall be public, in the presence of bystanders, and shall be continued without adjournment until completed and the result determined and declared." (emphasis supplied). Thus, it is clear the counting of the ballots should be a continuous, uninterrupted

procedure and, by implication, tally board members, therefore, should not be permitted to leave the polling place during the count. Article VII, Section 12 of the Arizona Constitution, states: "There shall be enacted registration and other laws to secure the purity of elections and guard against abuses of the elective franchise." (emphasis supplied). We believe the faithful performance of a board member's duties (A.R.S. § 16-773(C)) to secure the purity of elections and to guard against election abuses could not be fulfilled if he were free to come and go from the polls at his whim or caprice. In light of the above Constitutional provision, it is the opinion of this office that neither election nor tally board members should leave the polling place while the polls are open, unless for some emergency reason.

Regarding the fifth question, during the counting of the ballots anyone should be allowed inside the railing of the polling place as long as he is properly conducting himself. A.R.S. § 16-941 states: ". . .The count shall be public, in the presence of bystanders."

It appears to us that the intention of the legislature concerning elections is that the election and tally boards be a continuing board, and should, therefore, not be operated in shifts. To operate the boards in shifts would cause unnecessary confusion, general inefficiency in operation, and the probability that the boards may be understaffed by the departure of one shift member and the failure of his replacement to appear on time.

Having arrived at the opinion that board members should only leave the premises for emergency reasons, we must examine the specific reason for departure before answering the question of whether or not one who leaves the premises can return and resume his duties. A.R.S. § 16-772 and A.R.S. § 16-773 provide for the appointment of additional board members to fill vacancies. Thus, if one were to leave his poll for any reason, a replacement could and should be appointed. Surely if one left without an emergency reason, for personal business, etc., said individual should not be allowed to return and resume his duties. On the other hand, if merely a temporary replacement had been appointed to fill in during

Opinion No. 64-40-L
R-157
October 1, 1964
Page 4

an emergency leave, upon returning, said original board member should be permitted to resume his duties.

The above discussion has also answered the last part of the sixth question, that is, new members of the election and tally boards should be permitted to come in to replace those who might wish to leave or be excused permanently. A.R.S. § 16-772, § 16-773.

Robert W. Pickrell
ROBERT W. PICKRELL *by wee*
The Attorney General

RWP:SMR:WEE:alb