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March 8, 1960  
Opinion No. 60-32

REQUESTED BY: Honorable Robert Morrow  
State Senator

OPINION BY: WADE CHURCH, The Attorney General

QUESTIONS: 1. May the County set up and wholly supervise polling places located within an Indian reservation in the State of Arizona?

2. May the County and tribal officers set up and jointly supervise polling places located within an Indian Reservation in the State of Arizona?

CONCLUSIONS: 1. Yes (Qualified)

2. No (Qualified)

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I

The establishment of voting precincts is provided for in A.R.S. § 16-761 as follows:

"A. The board of supervisors of each county shall, on or before December 1 of each year preceding the year of a general election, by an order, establish a convenient number of election precincts in the county, and define the boundaries thereof.

B. Not less than twenty days before a general or primary election, and at least ten days before a special election, the board shall designate the place within each precinct where the election shall be held. \* \* \*"

The appointment of election boards and tally boards is provided for in A.R.S. § 16-771 as follows:

"§ 16-771. Appointment of election boards and tally boards; qualifications

A. When an election is ordered, and not less than twenty days prior to a general or primary election, the board of supervisors shall appoint for each election precinct one inspector, two judges, and not less than two clerks of election. The inspector, judges and clerks shall be qualified voters of the precinct for which appointed, and the judges and clerks shall be members of the political parties

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which cast the highest number of votes in the state at the last preceding general election, but if, not less than one week prior to the appointment, the chairman of the county central committee of either of the parties designates qualified voters of the precinct as judge and as clerk, they shall be appointed. The judges, together with the inspector, shall constitute the board of elections. Where the election precinct consists of three hundred and fifty or more qualified electors, the board of supervisors may in addition to the board of elections appoint a similar board to be known as the tally board. The tally board shall take custody of the ballots from the closing of the polls until the tally of the ballots is completed. The tally board shall consist of the inspector of the board of elections, two judges and not less than two clerks and shall be appointed with the same qualifications and on the same basis as is set forth in this section. A member appointed to serve on the tally board, with the exception of the inspector of the board of elections, shall not be appointed to serve on the board of elections. The inspector of the board of elections shall be a member of the tally board and during such time shall act as the supervisor of the tally board. No United States, state, county or precinct officer, nor a candidate for office at the election, other than a precinct committeeman or a candidate for the office of precinct committeeman, is qualified to act as judge, inspector or clerk.

B. At least ten days before a special election, the board of supervisors may in like manner appoint an election board and tally board in each precinct, as required. As amended Laws 1956, Ch. 112, § 1."

Concerning the duties of an election board, the Arizona Supreme Court in Morgan v. Board of Supervisors, 67 Ariz. 133, 192 P.2d. 236, stated:

"It is the duty of an election board to see that all who are justly entitled to vote are permitted to do so, and those not entitled to this privilege are prevented from exercising the right. Certainly the members of the election board need not stand impotently aside waiting, perhaps in vain, for a challenger, while unqualified persons vote."

Another election official is the election marshal who is appointed by the Board of Supervisors and is charged with the responsibility of preserving order and to permit no violation of the election laws. This is provided in A.R.S. § 16-774, as follows:

"§ 16-774. Election marshal; appointment; powers and duties

A. The board of supervisors shall, at the time provided in § 16-771, appoint a qualified voter of the precinct as election marshal. The board of supervisors may appoint a sheriff, deputy sheriff or constable as election marshal.

B. The election marshal shall preserve order at the polls and permit no violation of the election laws, and for that purpose is vested with powers of a constable from the opening of the polls until the count of the ballots is completed."

From the above three statutes, it is seen that all supervision of elections comes under the board of supervisors and their appointees, with the exception that judges and clerks of the election board can be appointed by the corresponding county party chairmen.

We therefore answer the first question in the affirmative with the qualification that a part of the supervision of polling places may be under the supervision of appointees of the "chairmen of the county central committee of either of the parties."

II

As is stated above, the statutes provide for election officials that are charged with the duty of supervision of an election. A.R.S. § 16-862 prohibits persons other than voters and election officials from being within the "fifty-foot limit". It provides as follows:

"§ 16-862. 'Fifty-foot limit' notices; posting; penalty for violation

A. The board of supervisors shall furnish with the ballots for each polling place, three notices, printed on muslin in letters not less than two inches high, reading: 'Fifty-foot limit' and underneath that heading the following:

'No person shall be allowed to remain inside these limits while the polls are open, except for the purpose of voting, and except the election officials and not more than one representative of each political organization represented on the ballot, such representative to be one of three appointed by the chairman of the local committee of such political organization. Voters having cast their ballots shall at once retire without the fifty-foot limit. A person violating any provision of this notice is guilty of a misdemeanor.'

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B. Before opening the polls, the election marshal shall post three fifty-foot limit notices approximately fifty feet, in different directions, from the entrance of the place in which the election is being held.

C. Any person violating any provision of the fifty-foot limit notice is guilty of a misdemeanor."

From the above section it appears that tribal officers would be prevented from being present to supervise the voting and tallying of ballots, unless they were named by the board of supervisors or party chairmen as election officials. Unless some other type of supervision of elections is contemplated, it is the opinion of the Attorney General that the statutes prohibit tribal officers from supervising state elections on Indian reservations.

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