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March 19, 1954
Opinion No. 54-46

TO: The Honorable Ruffo Espinoza
County Attorney
Santa Cruz County
Nogales, Arizona

RE: Registration of electors in
remote sections of county.

QUESTION: What provisions have been
made in the Arizona statutes
for the registration of
electors in remote sections
of the county?

In the general provisions for the registration of electors, the Arizona statutes provide for registration in the office of the county recorder and in the offices of the justices of the peace of the county. In addition there are three sections of the Code which authorize registrations outside of such offices, permitting registrations in remote sections of the county. One of these permits registrations anywhere within the county outside the offices of the recorder and the justices of the peace.

The general provisions are found in Section 55-202, A.C.A. 1939, as amended by Chapter 98, Laws 1953. They are as follows:

"55-202. Registration by county recorder and justices of the peace.--On and after January 2, 1954, and continuously thereafter, the county recorder of each county shall register without charge, and in accordance with the provisions of this article, any qualified elector who presents himself for such purpose. Qualified electors may in like manner register before any justice of the peace, or deputy registrar, and the justice of the peace and any other person who may have authority to register electors outside the office of the county recorder

shall promptly return each completed registration within seven (7) days of the date of registration to the county recorder of the county in which the elector so registered resides provided, that no elector shall be registered to vote in the primary election between five o'clock p.m. of the day which is four (4) months preceding the date of the next general election and six o'clock p.m. of the day of the primary election. No elector shall be registered between five o'clock of the sixth (6th) Monday preceding any general election and six o'clock p.m. of the day thereof.

Any deputy registrar or justice of the peace who shall fail to return any completed registration within seven (7) days of the date of registration to the county recorder, as provided, shall be guilty of a misdemeanor.

All necessary expenses incurred, by the county recorder in carrying out the provisions of this act, including all books, blanks and other supplies, shall be a county charge. County recorders shall supply the necessary blanks to justices of the peace and deputy registrars in their respective counties. The registration of electors required by the charter or ordinances of any city or town are not precluded hereby.

All registrations of electors made prior to January 1, 1954, shall be cancelled and be invalid on and after January 1, 1954. The county recorder shall place the affidavits of such cancelled registrations in a separate file and maintain the same for a period of two (2) years after which time such affidavits shall be destroyed."

This section provides for the registration of any elector who presents himself to the county recorder, or any deputy registrar, in the office of the recorder, or who presents himself to any justice of the peace of the county in the office of such justice of the peace. It also clearly recognizes that other sections authorize registration outside of the offices of the county recorder and the justices of the peace by referring to "any other person who may have authority to register electors outside the office of the county recorder".

Section 55-202a, A.C.A. 1939, as amended by Chapter 98, Laws 1953, enacted at the same time as Section 55-202, supra, provides:

"55-202a. Deputy registration officers.--
When the county recorder shall deem it necessary or advisable, in order to expedite or facilitate the registration of electors in any precinct he may commission deputy registration officers for such purpose. He may appoint in each precinct in the county deputy registrars equal in number to not more than the number of political parties having candidates on the ballot in the last general election. Before making any such appointment he shall request the county chairman of each such political party to recommend a person for appointment, and if a county chairman shall within ten (10) days of such request nominate a person who is otherwise qualified, the person appointed shall be selected from those so recommended. Deputy registrars must be qualified electors of the precinct for which they are appointed, but may take registrations in any precinct in the county. No person who is a public officer or a candidate for office, other than a candidate for the office of precinct committeeman, shall be appointed a deputy registrar. A person appointed deputy registrar shall have a fixed office, place of business or residence; shall be qualified to take acknowledgments of affidavits of registration, and shall serve without pay."

Under this section, in the circumstances mentioned, and after following the procedure prescribed, the county recorder may appoint, in any precinct in the county, deputy registration officers serving without pay in number not more than the number of political parties having candidates on the ballot in the last general election. Such deputy registration officers must be qualified electors of the precinct for which they are appointed, and shall have a fixed office, a place of business, or residence, but may take registrations in any precinct in the county.

At the time of the enactment of Sections 55-202 and 55-202a, supra, another section of the Code, enacted by Chapter 62, Laws 1933, was and still is applicable to the points here considered. This is Section 55-204, A.C.A. 1939, which reads as follows:

"55-204. Disabled electors--Electors in remote sections.--The recorder or any justice of the peace may register an infirm or disabled elector at his home or place of confinement, and the recorder may visit, once during the month of July of any regular election year, any remote section of the county which shall not be within twenty-five (25) miles of the office of such recorder or of a justice of the peace, for the purpose of registering the electors of such community, and the actual and necessary expenses attendant upon such visit, including mileage at the rate of five cents (5¢) for each mile traveled, shall be a county charge and paid out of the county general fund." (Emphasis supplied)

Authorizing the recorder or any justice of the peace to register an infirm or disabled elector at his home or place of confinement, wherever in the county it may be, this section also authorizes the recorder to visit certain remote sections of the county for the purpose of registering the electors of the community. However, such visits are restricted to areas "which shall not be within twenty-five (25) miles of the office of such recorder or of a justice of the peace". Furthermore, such visits may be made only during the month of July of any regular election year and, since Section 55-202, supra, prohibits registration "between five o'clock p.m. of the day which is four (4) months preceding the date of the next general election and six o'clock p.m. of the day of the primary election", registrations by the county recorder outside of his office may be made during only a few days in July in any regular election year. In 1954 these include only July 1 and 2. The county recorder, therefore, must usually avail himself of one or both of the other two methods provided by the statutes.

Here it is pertinent to note Section 12-202, A.C.A. 1939, which has remained unchanged since the Revised Code of 1928. It is as follows:

"12-202. 'Officer' includes deputy.-- Unless otherwise provided, each deputy of any state or county officer possesses the powers and may perform the duties attached by law to the office of the principal, and whenever the official name of any principal officer is used in law conferring power, or imposing duties, liabilities or prohibitions, it includes his deputies."

From this section it is clear that the authority granted to the county recorder by Section 55-204, supra, to take registrations in certain remote sections of the county, extends to any of his duly qualified and appointed deputies.

Prior to the first enactment of Section 55-202a, as added by Chapter 122, Laws 1947, the county recorder had recourse to no code sections other than Section 55-202 as it then existed and Section 55-204, supra, as authority to take registrations. By Chapter 11, Laws 1950 (2nd S.S.), however, Section 17-506a, A.C.A. 1939, as amended, was added. This reads as follows:

"17-506a. Performance of duties of county office at places other than the county seat.--
Whenever in the opinion of the chief officer of any county office, the public interest requires the performance of any of the duties of said office at a city or town having a population of more than two hundred (200) people and which city or town is more than thirty (30) miles distant from the county seat, said duties may be performed at said city or town by a duly appointed and qualified deputy of such county officer, in the same manner, and with like effect as if performed at the county seat. All records of such acts shall be filed in the office of the county officer at the county seat."

This section authorized the recorder, as the chief officer of a county office, to send any one or more of his duly appointed and qualified deputies out of the recorder's office to take registrations. However, in so doing, he was and is restricted to sending such deputies to cities or towns in the county having a population of more than two hundred (200) people and which city or town is more than thirty (30) miles distant from the county seat.

In reviewing the laws existing since 1950, and the more recent amendments of Sections 55-202 and 55-202a, we find no conflicts. Section 55-202, supra, relates only to registrations in the office of the county recorder or in the office of a justice of the peace and, as previously indicated, refers to and recognizes registrations under other sections outside of such offices. Section 55-204, supra, enacted in 1933, and a part of the law at the time of the recent amendments in 1953 of Sections 55-202 and 55-202a, supra, specifically referring to registration of electors, relates only to registrations outside of the office of the county recorder. In enacting Section

17-506a, supra, in 1950, the Legislature, by such general terms and by reference to the chief officers of all county offices, must have intended that all duties, which a recorder could or was required to perform in his office, might be performed by a deputy outside of such office, under the prescribed circumstances and restrictions. Finally, Section 55-202a, supra, relates only to deputy registration officers servicing without pay, an obviously different method of providing for registration of electors than those prescribed in Sections 55-202, 55-204, and 17-506a, supra, relating to paid officers and deputies. These distinctions, between service inside and outside of county offices and between paid and unpaid officers, specifically declare the intention of the Legislature and obviate the possibility of conflict.

The evident intent of the Legislature, shown in the above-cited sections of the Arizona statutes, is that every necessary or advisable authorized means should be used to expedite and facilitate the registration of qualified electors, so that none shall have to travel outside of his city, town, or precinct to register, and so that volunteers of all political parties may seek out all qualified electors in their homes or offices, or elsewhere, and give them every opportunity and facility to register without going to offices of the recorder or justices of the peace.

Before concluding, we deem it advisable to further emphasize in our interpretation of these laws that, in acting under each of these sections, the recorder must strictly comply with the specific requirements of the particular section and conform to its special limitations and restrictions. The maxim "expressio unius est exclusio alterius" is most applicable. This maxim is set forth very adequately in 50 Am. Jur., Statutes, Section 244, at page 238, which reads in part as follows:

"* * * it is a general principle of interpretation that the mention of one thing implies the exclusion of another; expressio unius est exclusio alterius. The rule applies even though there are no negative words excluding the things not mentioned. Thus, a statute that directs a thing to be done in a particular manner, or by certain persons or entities, ordinarily implies that it shall not be done in any other manner, or by other persons or entities. * * *"

Applying this maxim, we summarize the foregoing as follows:

1. Under Section 55-202, supra, registrations may be made only by the recorder or a deputy in the office of the county recorder, and by the justices of the peace in their respective offices, during permitted periods.

2. Under Sections 55-204 and 12-202, supra, as restricted by Section 55-202, supra,

(a) Registrations of an infirm or disabled elector may be made only by the recorder or a deputy, or by any justice of the peace, at the home or place of confinement, during permitted periods; and

(b) Registrations may be made of other electors, not infirm or disabled, only by the recorder or a deputy, during the month of July of any regular election year and within permitted periods, in any remote section of the county which is not within twenty-five (25) miles of the office of such recorder or of a justice of the peace, and on only one visit by the recorder or a deputy to such remote section,

3. Under Section 17-506a, supra, as restricted by Section 55-202, supra, registrations may be made, during permitted periods, only by a duly appointed and qualified deputy recorder, at a city or town having a population of more than two hundred (200) people and which city or town is more than thirty (30) miles distant from the county seat, and then and there only when in the opinion of the recorder the public interest requires registrations to be taken there.

4. Under Section 55-202a, supra, as restricted by Section 55-202, supra, registrations may be made in any precinct in the county, during permitted periods, by any deputy registration officer commissioned by the recorder, provided:

(a) The county recorder shall deem it necessary or advisable, in order to expedite or facilitate the registration of electors in any precinct, and commissions a person who is a qualified elector of such precinct as a deputy registration officer for such purpose and in such precinct.

(b) The recorder, before making any such appointment, requests the county chairman of each political party having candidates on the ballot in the last general election to recommend a person for appointment, and selects the person from those recommended, if a county chairman shall within ten (10) days of such request nominate a person who is otherwise qualified;

(c) The number of deputy registration officers commissioned in any one precinct is not more than the number of political parties having candidates on the ballot in the last general election;

(d) No person who is a public officer or a candidate for office, other than a candidate for the office of precinct committeeman, is appointed a deputy registration officer; and

(c) The person appointed deputy registration officer has a fixed office, place of business, or residence, and serves without pay.

Directly answering the specific question presented, provisions for the registration of electors in remote sections of the county are made in Sections 55-202a, 55-204, and 17-506a, supra, subject to the special conditions and restrictions made in each of these three sections and those made in Section 55-202, supra. In view of the restrictions as to areas in Sections 55-204 and 17-506a, supra, and the locations and populations of the towns mentioned in the letter requesting this opinion, the commissioning of deputy registration officers in these precincts under the authority of Section 55-202a, supra, will be the most effective means of providing for registrations in those communities.

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