

Opinion No. 50-5283

February 21, 1950

BY: JOE L. MARTINEZ, Attorney General

TO: Honorable Thomas J. Mabry Governor of New Mexico Santa Fe, New Mexico

{*132} At your request, I have been preparing the Primary Election Proclamation to be issued by you on April 3rd of this year, pursuant to § 56-808, New Mexico Statutes Annotated, 1941 Compilation. This proclamation requires you to state the offices for which each political party, subject to the primary election law, must nominate officers, and in this regard a question has arisen as to whether or not the electors of the County {*133} of Los Alamos are entitled to a voice in electing a representative in the State Legislature.

Section 3 of Chapter 134, Laws of 1949, insofar as is material, provides as follows:

"That said County of Los Alamos shall for legislative * * * purposes be attached to * * * the Twenty-Eighth Representative District, and, unless and until Floor Substitute for House Joint Resolution No. 17, relating to reapportionment of the Legislature should become law, to the Fifth Senatorial District."

This law became effective June 10, 1949 and at that time, in my opinion, gave the electors of the County of Los Alamos a voice in the election of a representative in the Legislature in the Twenty-Eighth Representative District.

The same session of the Legislature passed Floor Substitute for House Joint Resolution No. 17 which was a proposed constitutional amendment relating to the reapportionment of the Legislature. In a special election held in September, 1949 this resolution was adopted and became a part of the Constitution of this state. It provided:

"The House of Representatives shall consist of Fifty-Five (55) members, and the representative districts and the number of members to be elected from each district shall be as follows:

* * *

Twenty-Eighth. The counties of Torrance, Santa Fe and Guadalupe, one member."

It is to be noted that this constitutional amendment passed after the effective date of the act nowhere mentions the County of Los Alamos. The amendment did provide: "Upon the creation of any new county, it shall be annexed to some contiguous district for purposes of representation in the House of Representatives". In this connection, I wish to point out that the County of Los Alamos was created before the passage of this amendment and could not, in my opinion, be considered as a new county, for the

wording above quoted could only relate to counties created after the passage and adoption of the amendment. The amendment specifically provides that should it be adopted at a special election held before the regular election in 1950, as it was, it would control the election of the membership of the House of Representatives in the 1950 regular election. I am of the opinion that the constitutional amendment superseded § 3 of Chapter 134 of the Laws of 1949 and left Los Alamos County without any representation in the Legislature of this state. In this connection, I wish to point out that said amendment specifically provides that counties of the sixth class, of which Los Alamos is the sole member, are not entitled to any representation in the Senate of the state. I would advise that if you concur in my opinion you immediately notify the public that you do not intend to include Los Alamos County within those counties voting for representatives of the Twenty-Eighth District in the State Legislature so that any person who disagrees with this conclusion and who feels aggrieved by it may bring a proper action in the courts of this state, if it is so desired, to finally determine the question.

I wish that my conclusion could have been otherwise for I do not feel it fair to deprive the citizens of any part of our state of some amount of representation in its legislature. It seems ironic that the constitutional amendment reapportioning the State Legislature which was designed to give a more equal representation in the Legislature should have the effect of completely denying it to one county of the state.