

## Opinion No. 51-5379

June 25, 1951

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** Mr. La Vor W. Burnham Assistant District Attorney Farmington, New Mexico

{\*65} I am in receipt of your letter of June 5, 1951, in which you ask for an opinion from this office on the question as to whether, in a local option petition, the petitioners may submit additional names after the petition has been acted upon by the county commissioners and found to be insufficient.

You mention that you have previously interpreted N.M.S.A. § 61-301 as meaning that additional petitions may not be submitted to bring the aggregate number of names up to the twenty-five per cent required by statute in a case where less than ninety days have elapsed between the filing of the first and last petitions, but where the county commissioners have acted upon the first petition and have found it insufficient. You say that you have been of the belief that in such a case the submission of a "new petition" is required.

In my opinion, additional petitions may be submitted and, if they are filed within the three months statutory limit, must be considered by the commissioners, any action taken by the commissioners on the first petition, or petitions, notwithstanding. Although the commissioners are not expressly forbidden from "taking action" upon the first petition and finding it insufficient, the provision of § 61-301 would make such procedure a futile and useless act. It is stated that one or more petitions may be filed and that the commissioners **shall call an election** "if the aggregate of names signed to all such petitions shall equal or exceed twenty-five per cent of the number of legal votes cast in said county \* \* \* \* for Governor \* \* \* \*."

The sole limitation is that the "board of county commissioners \* \* \* shall refuse to recognize said petitions if more than three months shall have elapsed between the filing of the first and last petitions."

In my opinion, then, the commissioners must consider the aggregate of petitions which are submitted within the three months period.

To say that any finding by the commissioners that an initial petition is insufficient forces the petitioners to "start from scratch," is to hold that the commissioners need never consider more than one petition. The process of blocking an election by considering only a first and insufficient petition, and then calling for a "new petition," could be interminable. And as I have indicated above, I feel that such a procedure, whatever the motive behind it, is directly contrary to the statute.

I hope that this opinion sufficiently answers your questions on this matter.