

Opinion No. 51-5449

October 23, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: L. W. Liebrand, Chairman New Mexico Public Service Commission Santa Fe, New Mexico

{*156} This is in reply to your letter of September 27, 1951, in which you advise that:

"The Village of Carrizozo is desirous of selling its gas plant and distribution system to a private individual or corporation, but is not sure whether it is privileged to sell by means of advertising the sale in the newspapers after approval of the City Council, or whether the sale has to be submitted to the citizens of the community at an election."

The statute governing sale of such property by a municipality is set forth as Section 14-4301 N.M.S.A., as follows:

"All municipal corporations in this state, whether cities, towns or villages, incorporated under general or special laws, shall have the power and authority to sell and convey or lease any water-works plant, including entire water works systems, light plant, sewer systems, buildings, or other municipal property belonging to such municipal corporations and used for municipal purposes; Provided, however, that if such property intended to be sold or leased is of a value in excess of \$ 500, before such municipalities shall have such power and authority, the question of whether or not such property shall be sold or leased shall be submitted to an election of the qualified electors of such municipality, who have paid a property tax upon real estate situate therein during the period of one (1) year, the last day of said year being the day next preceding the date of such election; and Provided, further, that where any otherwise qualified elector has not paid such tax by virtue of an exemption under the provisions of chapter 130 of the Laws of 1923 (§§ 76-112 -- 76-118), such elector shall be deemed qualified and shall be permitted to vote. Said election shall be called by the city or town council or board of trustees of such municipality, setting forth the proposed sale or the lease of such property, the amount of the purchase price to be received, if a sale, and the length of time such property is to be leased, if a lease is contemplated, the consideration of such lease, and the length of time for which it is to run, and the terms of such contemplated sale or lease.

"Such election shall be called and held in the same manner, and the returns canvassed in the same way as provided for the election of municipal officers by article 55 (4) of chapter 75 of the Code of New Mexico of 1915, and such question may be submitted at either a general or special election, called for that purpose, and in a case of a special election, the same notice shall be given as in a general election."

In addition, I wish to point out that the statute and the methods of proceeding thereunder has been completely explained and construed in the case of Clovis v. Southwestern Public Service Company, 49 N.M 270, 161 P. 2d 878, 161 A.L.R. 504.

I trust this will answer your inquiry fully.