

Opinion No. 54-5887

January 15, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: L. C. Brown, Administrative Officer Soil Conservation Committee Post Office Box 786 State College, New Mexico

{*321} We have your letter of December 24, 1953, in which you ask some ten questions with respect to elections to be held in March under the recent amendment to the Soil Conservation District law (Ch. 158, L. 53). Your questions will be dealt with separately.

{*322} Question 1. Are there any provisions of the general election laws that apply to or restrict the powers of the boards of supervisors in holding such elections, because a soil conservation district becomes "a governmental subdivision of this state and a public body corporate and politic . . ."?

A. No. The requirements for this election are set up specifically by Ch. 158 and the matters not contained therein are left to the rule making power of the various districts.

Question 2. Does the power of the boards of supervisors include determination of the method of nominating candidates?

A. Nominations must be made through the use of nominating petitions as specifically provided by Section 2(c) Ch. 158.

Question 2. (b) Or, are nominating petitions required as in the case of newly created districts (Section 2, sub-section (c))?

A. This is answered by 2(a) above.

Question 2. (c) If so, must such nominating petitions be submitted to the State Committee prior to the election?

A. No, elections are under the absolute control of the local districts under the new law. The only function the State Committee has is to pay the expenses of these elections and receive from the district the results thereof.

Question 2. (d) If petitions are required, must they comply with the same requirements as to number of signatures, etc., as in the case of petitions in newly created districts?

A. Yes, for the reason that the local districts, under Section 2 of Ch. 158, are bound by the same requirements as the State Committee is in the case of newly created districts.

Question 3. In holding elections, can the board of supervisors of an existing district use any or all of the following methods:

- a. Call a meeting of landowners, and elect supervisors by written ballot, or by acclamation?
- b. Hold an election by mail, in which ballots are mailed out to landowners, marked and returned for counting?
- c. Designate polling places, at which voting shall be done?
- d. Can the board make provision for absentee voting, by the landowner securing a ballot and mailing in his vote?

A. The answer to all of the subdivisions of this question is "Yes". Inasmuch as the statute does not set forth the manner of election and under the provisions of Section 2(c), Ch. 158, each district may choose whatever method it prefers.

Question 4. Is there any required method of notifying landowners of an election, such as by mailing individual notices, publishing in a newspaper of general circulation, or posting notices?

A. No, as long as the statutory requirement of "due notice", is followed. Any of the three methods mentioned would satisfy this requirement.

Question 5. Does the board of supervisors appoint persons to officiate at the elections? Or, should the names of such persons be submitted to the State Committee, and appointments made by the Committee:

{*323} A. The Board of Supervisors appoints the election officials and the State Committee has nothing whatever to do with it or any other matter pertaining to the election.

Question 6. (a) Should the State Committee formally approve the results of the election?

A. No, for the reason given in answer to No. 5 above .

Question 6. (b) Should the State Committee approve appointments made by a board of supervisors to fill vacancies between elections?

A. No, the absolute power to fill vacancies is given to the board of supervisors by Section 3, Ch. 158.

Question 7. (a) Should any election officials, whether appointed by the board of supervisors or by the State Committee, sign and submit an Oath of Office, as heretofore required?

A. It is preferable that the election officials sign an Oath.

Question 7 (b) Likewise, should elected supervisors, or those appointed to vacancies occurring between elections, sign and submit Oaths of Office?

A. All those holding the office of supervisor should sign an Oath of Office.

Question 1. (c) If Oaths of Office are required, should they be sent out and handled by the State Committee, as heretofore?

A. This practice is recommended as a practical matter and to save expense although it is within the statutory authority of the local boards of supervisors.

Question 8. Section 2, sub-section (c) states ". . . All owners of lands lying within that zone of the district which shall contain the larger proportion of the total number of the landowners of the district shall be eligible to vote in such election for three (3) supervisors of those nominated by the landowners of that zone. All owners of lands lying within that zone of the district which shall contain the smaller proportion of the total number of landowners of the district shall be eligible to vote for two (2) supervisors of those nominated by the landowners of that zone . . ."

In determining the eligibility of voters in an election, must boards of supervisors be guided by the above provisions?

A. It is clear that no board of supervisors could change this statutory requirement.

Question 9. In the event that State Committee funds are not sufficient to pay all expenses of the election in an existing district on the first Tuesday in March, 1954, can such district use its own funds to pay such expenses?

A. If the State Committee does not have sufficient funds to pay for all elections, we recommend that the funds available be apportioned amongst the various districts and that they be asked to conduct their elections in such manner as to not use any more than that available. If a given district has funds and needs to use them to supplement the State Committee money, it may be so.

Question 10. What is the legal standing of an existing district which fails to hold an election of supervisors in March, 1954, say because of lack of funds? Will the board of supervisors holding office at that time continue to hold office until their successors are elected and qualified?

{*324} A. The board of supervisors would continue to hold office until their successors were legally elected and qualified. However, if the State Committee will follow the procedure suggested in Answer to Question No. 9, we see no reason why any district should fail to hold an election.

By: W. R. Kegel

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