

Opinion No. 57-240

September 24, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Mr. Robert H. Sprecher, Assistant District Attorney, Fifth Judicial District, Roswell, New Mexico

QUESTION

QUESTIONS

1. If each of these two precincts which now make up the City of Roswell is divided in half making four precincts out of what was originally two precincts, is this an organization of four new precincts, or is it merely a demarcation and change in the old precincts?
2. If such division is made, creating four precincts out of the same area now occupied by two precincts, is this such an organization of new precincts as to make Section 15-37-17, N.M.S.A., 1953, apply with reference to holding an election within thirty (30) days from the time the precincts were created for Justice of the Peace and Constable: and, if said section applies, must an election be held in all four precincts?
3. Referring to Section 15-37-18, N.M.S.A., 1953, if petitions are received by the Board of County Commissioners from residents within the areas to be broken down into two new precincts, as provided in said section, then is it mandatory upon the Board of County Commissioners to make such creation or is the matter of demarcation and organization of new precincts discretionary with them?

CONCLUSIONS

1. There is an organization of two new precincts and a change in the boundaries of the two old precincts.
2. Section 15-37-17, N.M.S.A., 1953 Compilation, in reference to holding elections, would require an election in the two new precincts but not in the two old and altered precincts.
3. The demarcation and organization of new precincts is a matter for the discretion of the Board of County Commissioners.

OPINION

ANALYSIS

We believe that there will be a retention of the two old precincts especially if the Board of County Commissioners of Chaves County retains the designation originally given to such old precincts even though their boundary lines will be altered by the proposal set forth in your request. However, since the two old precincts will be divided, this will result in a creation of two new precincts in Chaves County, which leads us to your second question.

As to the two new precincts created, the election provision of Section 15-37-17, N.M.S.A., 1953 Compilation, will apply and in accordance therewith the Board must, within thirty days from the time of organization of the two new precincts, hold an election for Justice of the Peace and Constable in each of such new precincts in the manner provided by law. But since such election provisions of the last cited statute are only applicable in the creation of new precincts, no election should be held in the two prior precincts even though such prior precincts will then have altered boundary lines.

In reference to your third question, you will observe that Section 15-37-18, N.M.S.A., 1953 Compilation, reads as follows:

"The board of county commissioners shall not set off or organize any new precinct unless a petition be first presented to the board, signed by at least fifty (50) citizens, resident within the boundaries of the proposed new precinct; and precincts so created shall be as compact in form, and cover as small an area as practicable, and shall be so established, and their boundaries so fixed, as to serve the greatest convenience of the people therein."

In our opinion such section, while it prescribes certain guides to be followed by the County Commissioners in fixing the boundaries and areas of new precincts, nevertheless vests certain discretion in the Board of County Commissioners as to precinct boundaries and areas. Furthermore, whether such creation of new precincts shall be had at all is also a matter of discretion with the Board of County Commissioners under Section 15-37-18, supra, and although the petitions may be proper in all manner it would not be mandatory for the Board of County Commissioners to act favorably upon such petitions.

It occurs to us that in treating of these questions reference should be made to Section 3-2-1, N.M.S.A., 1953 Compilation, 1957 Supplement. However, we do not believe that that section answers any of your questions. It deals primarily with the creation of voting districts or divisions within precincts and with the consolidation of precincts for voting purposes and does not deal with the creation of new precincts as such.

You will notice further that Section 3-2-1, supra, is part of the election laws of New Mexico and is not compiled as a section dealing with county or precinct organization. Furthermore, it was held in Opinion of Attorney General No. 4841, dated January 24, 1946, that what is now Section 3-2-1, supra, does not give any power to county commissioners to create new precincts and that when the creation of new precincts is

considered by the Board of County Commissioners, they must proceed under Section 15-37-17, et seq., N.M.S.A., 1953 Compilation.