

Opinion No. 57-295

November 15, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,
Assistant Attorney General

TO: George H. Franklin, Chief, Division of Liquor Control Bureau of Revenue, P. O. Box
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QUESTION

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1. May liquor establishments in a locality remain open and engage in the sale of alcoholic beverages on the day when a bond election is held in that locality;
2. When a liquor local option election is held,
3. When a sales tax ordinance election is held;
4. When a school bond election is held; or
5. Any other type county or municipal election not mentioned?

CONCLUSIONS

1. Yes.
2. No.
3. No.
4. Yes.
5. See opinion.

OPINION

ANALYSIS

The fundamental governing statute, as suggested by the inquiries, is compiled as § 46-10-14 (d), N.M.S.A., 1953 Compilation, which provides:

"(d) It shall be a violation of this act for any retailer to sell, serve or deliver, or for any dispenser or club to sell, serve, deliver or permit the consumption of any alcoholic liquor

on his premises: On Monday between midnight and 2:00 A.M.; and on any week day between 2:00 A.M. and 7:00 A.M.; **or on the day of any general state or city election between the hours of 7:00 A.M. and 7:00 P.M."**

From the language quoted, the above stated questions obviously arise from a need to classify, under this Act, the various type election as are provided for by the laws of this state.

Attorney General's Opinion No. 6312 (1955-56) identified a general state election as an election authorized by the Legislature, conducted under the auspices of the Secretary of State and held simultaneously in all precincts of the state. It may be added that a general election is, also, such as is open to all voters who qualify by virtue of citizenship and residence privileges and not restricted by property ownership qualifications.

Your first inquiry is directed, generally, to bond elections. Under the constitutional provisions found in Article IX, §§ 10 and 12, such elections are restricted to electors, ". . . who paid a property tax therein (county or municipality) during the preceding year . . .", and § 11 of the same Article provides that electors must be land owners. Accordingly, a bond election, called by either the municipal or county government would not be a general election as spoken of in Opinion 6312, supra. It is thus our opinion that licensed premises may remain open for the sale of alcoholic beverage on days designated for holding bond elections.

Local option elections are provided for in § 46-3-1. This statute specifies that a petition may be submitted by the "legal voters of any proposed local option district," and further, that, "at such election the registration shall be shown by the final registration book of the precincts for the last preceding general election;". Also, the manner of conducting local option elections shall be as that provided for general elections. There is no tax or property qualification for the electorate in this case. All persons eligible to vote in a general election are eligible in this special type election. Therefore, it is our opinion that where a local option election is called in either a county or municipal district, or in both, as the case may be, such election is general with those specified areas, and according liquor establishments shall remain closed between the hours stated.

A sales tax ordinance, in keeping with § 14-42-25 (p.p.), may be considered at, ". . . a regular election for municipal officers, or at a special election called for that purpose, . . ." and the question shall, ". . . be submitted to the qualified electors of the community, . . ." As in the case of local option elections, all legal or qualified voters may participate without conditions of tax payment or property ownership. Thus, licensees must keep their establishments closed during the designated voting period.

Article IX, § 11 of the New Mexico Constitution specifically requires that electors in school bond elections be "owners of real estate". In keeping with the aforequoted reasons, such an election is not general and open to all voters. Accordingly, dispensaries, retail stores and clubs are not, in our opinion, required to close on school board election days.

Other special or local elections may be considered under the rules herein discussed. Summarily, where an election is open to all voters in the state, county or municipality, it is our opinion that licensed premises must remain closed. Where, however, elections are called in which only property or taxed voters may participate, no closing is required.

We are not unmindful of the failure of the language of § 46-10-14 (d) to specify counties, but are of the opinion that it was not the intent of that enacting body to create political subdivisions to be treated differently from the state or municipalities as provided in this instance.