

Opinion No. 57-28

February 15, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,
Assistant Attorney General

TO: Mr. R. L. Guice, Administrative Officer, State Soil Conservation, Committee of New Mexico, P. O. Box 786, State College, New Mexico

QUESTIONS

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1. How are candidates for supervisor at large in existing Soil Conservation Districts nominated?
2. In the event of a mail ballot, are provisions made for nominating all candidates for supervisors of such Soil Conservation Districts?
3. What are the terms for the two supervisors elected at large?
4. Is the election open to all land-owners, both cooperators and non-cooperators?
5. Will you supply the Committee with the proper procedures which must be followed in conducting the elections?

CONCLUSIONS

1. By nomination from the floor at the annual meeting and by nominating petitions subscribed to by all the landowners.
2. Yes.
3. Three years.
4. Yes.
5. See the analysis.

OPINION

ANALYSIS

Under § 45-5-8, N.M.S.A., 1953 Compilation, (Pocket Supplement), all soil conservation districts are required to hold an election for supervisor or supervisors during the month

of September, beginning with the year 1957. The procedure to be followed is set out under § 45-5-7, N.M.S.A., 1953 Compilation, (Pocket Supplement), and the act specifically states that none of the provisions of the "Election Code" (Chapter 3, N.M.S.A., 1953 Compilation) shall be applicable to the election under this act. The above section authorizes the election of five district supervisors, two of whom shall be elected by the zone of the district which contains the larger proportion of total landowners in the district, one of whom shall be elected from the zone in the district which contains the smaller proportion of total landowners in the district, and for two supervisors designated as supervisors at large to be elected by all of the landowners in the district.

Question No. 1 asks how are candidates for supervisor at large to be nominated. Under § 45-5-7, nominations from the floor at the district's annual meeting, which is to be held during the month of September, is one method. The above section, however, also allows the present county supervisors to hold an election by mail, or on some other day in September if a meeting is called for an election by the county supervisors. If the meeting were held at the annual landowners meeting there would be no difficulty in nominating supervisors at large at that meeting from the floor. If, however, the county supervisors should decide to conduct the election by mail or at a meeting called for the election of supervisors, the section seems to be silent as to how supervisors at large shall be nominated. The section directs the method to be used by the landowners to nominate, by subscribing to petitions, in the case of three of the supervisors, but does not direct the subscription of petitions for supervisors at large. It would appear that the Legislature intended for nomination of supervisors at large by some means other than nomination from the floor at the annual meeting, but none is provided under this act. This office, in Attorney General Opinion, 1953-54, No. 5887, stated:

"The requirements of the election are specifically set up by Laws of 1953, Chapter 158 (the existing act at the time) and matters not contained therein are left to the rule making powers of the various districts rather than being governed by the general election law."

Since the Legislature specifically directed that three supervisors could be nominated by petition, and in view of the above opinion, we think that the county supervisors have authority to accept petitions for the nomination of supervisors at large if the petitions are subscribed by landowners from both zones in the district and if they are obtained in accordance with subsection (c) of § 45-5-7, which requires that each petition shall be subscribed by at least ten landowners.

In answer to question No. 2, assuming the county supervisors have the authority to accept petitions to nominate supervisors at large, and since § 45-5-7 specifically relates how the other supervisors shall be nominated, we feel that in the event of a mail ballot provisions are made for nominating all candidates by petition.

Answering question No. 3, the terms for supervisors at large are found in § 45-5-8, which states as follows:

"The term of office of each supervisor shall be three years except that the supervisors who are first appointed shall be designated to serve until the first election of supervisors, from and after which time all supervisors shall be elective and except that at the first election to be held during the month of September beginning with the year 1957 the two supervisors elected by the landowners in the dominant zone of the district shall serve for a term of one year and the supervisor elected by the landowners in the other zone of the district shall serve for a term of two years."

Since there is no qualifying phrase in the statute after designating the term of office as being three years, it is evident that the term for supervisors at large shall be for three years.

In answer to question No. 4, the election would appear to be open to both cooperators and to landowners who are not cooperators within the district. The term "landowners" is used at all times in the act in regard to voters qualifying for the election. The act does not at any point state that the election shall be exclusive to so-called cooperators and, therefore, we feel that any landowner within the district may vote in the elections.

In answer to question No. 5, the act set up specifically the procedure to be followed in many instances. Where the act does not specifically state the procedure to be followed, it should be pointed out that the district supervisors are vested with the authority to conduct the election as they see fit. It can generally be stated that the following methods may be used in holding an election. The county supervisors, after giving due notice, by mailing individual notices, or by publishing in a newspaper of general circulation, or by posting notices, may hold the election at the annual meeting. The supervisors, after giving due notice, as indicated above, could also hold an election by mail by mailing ballots which could be marked and returned for counting. The supervisors could designate polling places at which places voting could be carried out, or the election could be held at a special meeting and the supervisors elected either by written ballot or by acclamation.

We trust the above fully answers your questions.