

Opinion No. 59-136

September 9, 1959

BY: HILTON A. DICKSON, JR., Attorney General

TO: Mr. John S. Maxon, Member Board of Directors Sandia Conservancy District c/o Stuart Hines Attorney at Law 2929 Monte Vista Blvd. N.E. Albuquerque, New Mexico

{*207} This is in response to your recent letter asking for our advice on certain questions relative to the forthcoming election of a board of directors for the Sandia Conservancy District. This will also confirm certain tentative oral opinions in this regard recently expressed to you.

Specifically, you have asked whether the special election of a board of directors for the Sandia Conservancy District to be held October 6, 1959, in accordance with Sections 75-28-33 through 75-28-48, N.M.S.A., 1953 Compilation, may be held in conjunction with a city election in Albuquerque being held the same day, or must be held as a separate election.

You state that the city election will run from 8:00 a.m. to 7:00 p.m. on October 6. The tabs from voting machines will be delivered into the custody of the City Clerk upon tabulation of the votes from said machines. The boundaries of the Conservancy District are not coextensive with the corporate limits of the City of Albuquerque, portions of the District being outside the City and portions of the City being outside the District. You state that the present board of directors has tentatively approved the plan whereby the elections will be consolidated and one voting machine will be used for board and city elections in each polling place. You question the legality of such an arrangement.

It is our opinion that the special election of the board of directors of the Sandia Conservancy District to be held October 6, 1959, being the same date as the city election in Albuquerque, may not be held in conjunction with such city election except insofar as we shall explain below.

Section 75-28-41, N.M.S.A., 1953 Compilation, (P.S.), states that the five director members of a conservancy district formed after July 1, 1952, (including the Sandia Conservancy District), shall be elected on the first Tuesday of October, 1959, and each succeeding sixth year thereafter, at a general election. The first Tuesday of October this year (1959) falls on October 6. Sections 75-28-35 and 75-28-36 authorize voting in conservancy district elections by qualified electors only, qualified electors being those persons over 21 years of age owning property within the District for at least six months prior to the election and wives of otherwise qualified electors owning community real property within the District. Section 75-28-42 provides for the use of printed ballots containing only the names of the candidates for election at large in the entire district {*208} and the names of the candidates for the election in the county for and to which the ballots are prepared and applied. Such section further states that no name shall

appear on any ballot except that of a candidate who shall have filed his notice of candidacy as provided in the statutes. Section 75-28-43 provides that the polls for such election shall open at 9:00 a.m. and close at 6:00 p.m. on the day of the election; and further provides that immediately after the closing of the polls, and the opening of the ballot boxes and count of the ballots by the judges of the election certified by such judges, one copy of the certificate together with all ballots cast shall be placed in the ballot box and sealed and delivered to the secretary of the board of directors.

You will note that there are certain differences between the procedure for election for conservancy district board members and those you have stated applicable to the city election in Albuquerque. The hours the polls are open differ. The tabulated ballots for the conservancy district election are required after certification to be delivered to the secretary of the board while the tabs from the voting machines used in the city election are forwarded to the city clerk, and further, the act relating to conservancy district elections provides for the use of a printed ballot containing the names of the candidates. In view of these differences in election procedure, it is our opinion that the statute relating to conservancy district board of director elections requires that such election cannot be held in conjunction with the city election, or any other election.

In our oral discussions, you raised the question as to whether the reference to printed ballots in Section 75-28-42 precludes the use of a voting machine for the conservancy district board of director elections. We have given you the tentative opinion that said section and Section 75-28-43 preclude the use of such voting machines. You will note that Section 75-28-42 requires in such elections that printed ballots be distributed to the election judges. Further, Section 75-28-43 speaks of the judges opening the ballot boxes prior to counting the total votes cast. These specific references to the use of printed ballots and ballot boxes would, if taken alone, preclude the use of voting machines if the sections were strictly complied with. However, further research into this matter has led us to Section 3-4-3 in the Pocket Supplement to the 1953 Compilation of the statutes. This section states in essence that in precincts where voting machines are adopted by the county commissioners for use in "elections and primary elections", they may be used in "any other election" if the authority calling the particular election, in its discretion, determines that the use of such machines in such election is advisable. In our opinion, this section should be construed to allow the use of voting machines in the Sandia Conservancy District Board of Directors election if the present board determines that their use is advisable.

However, in our opinion, if voting machines are used by the conservancy district, they should not be the same machines used in the city election. The statutory requirements for certification of conservancy ballots to the secretary of the board and the different provisions for the hours the polls are to remain open, in our opinion, preclude the use of the same machines for both elections.

However, we wish to point out that the use of paper ballots in accordance with Sections 75-28-42 and 75-28-43 would appear to be the safest route to follow in conducting the election. Such ballots could be handed to qualified electors who could mark the ballots

in the same booths as contain the voting machines used in the city elections and after leaving the booth, drop such ballots into a separate ballot box provided for that purpose.

You have also asked whether {*209} there is any legal objection to (1) holding the conservancy district election in the same polling places as those provided for the city election, and (2) using the same election judges as are used in the city election, provided that such judges are qualified electors. Section 75-28-41 requires that the election judges in a conservancy district election be qualified electors and residents of the precinct in which they are appointed to act.

We can see no legal objection to such procedures. We stress, however, that in our opinion, the election of the Sandia Conservancy District must be conducted as a separate election and in accordance with the above cited statutes.

By Philip R. Ashby

Assistant Attorney General