

Opinion No. 60-198

October 17, 1960

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

TO: Dan Sosa, Jr. District Attorney Third Judicial District Las Cruces, New Mexico

QUESTION

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After the filing of a petition asking that an election be held submitting the question of rejection or approval of a municipal sales tax ordinance adopted pursuant to Section 14-42-25 N.M.S.A., 1953 Compilation (P.S.), how soon should such election be held?

CONCLUSION

See Analysis.

OPINION

{*603} ANALYSIS

The question herein considered calls for an interpretation of Section 14-42-25, N.M.S.A., 1953 Compilation (P.S.) which authorizes municipalities to enact ordinances providing for municipal sales taxes. The second paragraph of said section provides as follows:

"No ordinance of the governing board of the municipality relating to a municipal sales tax shall go into effect until sixty (60) days after its passage. If at any time within the sixty (60) days a petition signed by ten per cent (10%) of the registered voters is presented to the governing body, asking that the measure in question be submitted to a vote of the people for adoption or rejection, said measure shall not go into effect until an election shall have been held as petitioned. **It shall be the duty of the governing body of the city to provide for such election within thirty (30) days of the filing of the petition.**" (Emphasis supplied.) Our interpretation of the emphasis portion of the above-quoted statutory language is specifically requested.

The question then is: Must the city hold the election asked for within thirty day of the filing of the petition, or is the thirty days merely the time within which the call for the election should be issued. Our conclusion is that the latter is the proper interpretation, and that the election itself need not be held within thirty days of the filing of such petition.

First, while the critical language is somewhat ambiguous, a fair reading of it supports the conclusion that we favor. It is declared that the governing body shall "**provide** for such election within thirty (30) days . . ." (Emphasis added). If the Legislature intended that the election should be **held** within thirty days it could have specifically so-provided. We think it more likely that it was intended that the call or election proclamation be issued within thirty days.

Furthermore, the legislative history of the subject statutory section lends support to our conclusion. The section was originally enacted by Laws of 1955, Chapter 233, Section 2. In its original form there was no provision for protest petition and election. Section 14-42-25 was amended by Laws 1957, Chapter 240, Section 2, which provided in part that in municipalities having less than seventy thousand population such taxes should be submitted to a vote of the qualified electors. Some procedures for the conduct of such election were set out in the statute and it was further provided as follows:

{*604} "In all other respects such election shall be called, conducted and the returns thereof canvassed and certified in the same manner as municipal elections."

The 1959 amendment (Laws of 1959, Chapter 295, Section 1) eliminated the procedural provisions of the 1957 Act. Since the present section contains no guide for the calling and conduct of such elections, we must look to any general law which might govern.

Section 14-14-1 through 14-14-5 instruct us as to the manner of conducting municipal elections. In the absence of specific legislation to the contrary, we must rule that the election contemplated by Section 14-42-25 should be conducted in accordance with the general municipal election statutes. Section 14-14-3, provides for the issuance and publication of the municipal election proclamation. However, it does not declare when the election itself must be held. It must therefore be concluded that in the instant situation the Legislature intended the setting of an election date to be within the reasonable discretion of the municipal governing body.

In conclusion, we find that the thirty day period provided by statute is the period within which the election call or proclamation must be issued. The setting of an actual election date is within the reasonable discretion of the municipal governing body. It will be noted, however, that where a petition is duly filed the subject ordinance will not go into effect until after an election has been held.

By: F. Harlan Flint

Assistant Attorney General