

## **Opinion No. 61-130**

December 15, 1961

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Thomas A. Donnelly, Assistant Attorney General

**TO:** Mr. J. D. Sneed, Superintendent, New Mexico School for the Visually Handicapped, Alamogordo, New Mexico

### **QUESTION**

#### QUESTION

Is it mandatory that the Board of Regents of the New Mexico School for the Visually Handicapped provide the use of a building owned by the Institution as a voting site in any general, primary or local election, when the Board of County Commissioners has designated such location as a polling place?

#### CONCLUSION

No.

### **OPINION**

#### ANALYSIS

Under the facts as stated in your letter, you have indicated that the Board of County Commissioners of Otero County desire to utilize a building belonging to the New Mexico School for the Visually Handicapped as a voting site for the primary election to be held next May. The Board of Regents of the Institution has apparently expressed concern over the possibility of the creation of a traffic and safety hazard which might result from utilizing an institutional building for voting purposes in an election, particularly since the building and surrounding area is frequented by visually handicapped children of the school.

The answer to your question posed above is governed in part by the provisions of Section 3-2-1, N.M.S.A., 1953 Compilation (P.S.). This section provides in applicable part as follows:

"At a meeting to be convened no later than the first Monday in December of every oddnumbered year, each board of county commissioners shall, by order entered of record, divide every precinct and voting division in their respective counties where more than six hundred [600] votes were cast at one [1] polling place at the last preceding general election into two [2] or more election districts for voting purposes only, and shall define the boundaries of each of such election districts; and each such district shall be

so made that no polling place shall be required to accommodate more than six hundred [600] voters. Such election district shall be designated respectively as election district A, B, C, etc., of the precinct divided.

\* \* \*

"The county commissioners shall designate as the polling place in each precinct or election district the most convenient and suitable public building or school building in said election district which can be obtained. If no public building or school house is available, the county commissioners shall provide some other suitable place, which shall be the best place obtainable in said election district, taking into consideration the purpose for which the same is to be utilized under the provisions of the election code. It shall be the duty of all boards of education, upon application of the board of county commissioners, to permit the use of any school building or part thereof for the sessions of any registration board and the conduct of any general or special state or county election. In order that such school building may be utilized as herein provided, the day of any general or special statewide election is hereby declared to be a school holiday."

Under the provisions of the above cited section, it is specified that the Board of County Commissioners shall designate as the polling place in each precinct or election district, a convenient and suitable public or school building. The law contemplates that if no public building or school house is available, the County Commissioners shall provide some other suitable place which shall be the best place obtainable in said election district taking into consideration the purpose for which such site is to be utilized. The statute requires the cooperation of all "boards of education" upon the application of the Board of County Commissioners to permit the use of public school buildings, or parts thereof, as a polling site within the precinct or election district during general, special or county elections.

The term, "board of education", as specified within the meaning of such statute, does not, however, apply to the Board of Regents of a State Institution, such as the New Mexico School for the Visually Handicapped. The above statute has application only to the boards of education of local public schools, and is exclusive of State educational institutions.

Article XII, Section 2, and Article XII, Section 13 of the New Mexico State Constitution, designates the New Mexico School for the Visually Handicapped as a State educational institution and provides for its control and management by a Board of Regents. Such constitutional authority entrusts the Board of Regents of the School for the Visually Handicapped with the control and supervision of the school pupils as well as the property or buildings of the school. Under this constitutional authority, the Board of Regents of the New Mexico School for the Visually Handicapped may properly adopt appropriate policies or regulations to safeguard and protect the visually handicapped students attending such institution.

Upon construction of the above constitutional provisions, together with the language of Section 3-2-1, N.M.S.A., 1953 Compilation, it is our opinion that the Legislature did not intend that the institutional buildings of the New Mexico School for the Visually Handicapped be made available as voting sites for election purposes when the Board of Regents of such institution determines otherwise. While it is not mandatory that the Board of Regents of such institution provide a building for use in connection with the holding of elections within the precinct or election district, it should be noted, however, that buildings of such institution or a portion of such institution may, upon approval of the Board of Regents of the institution, be made available as an election site whenever the Board of Regents may grant such permission. However, the using of such property of the New Mexico School for the Visually Handicapped as an election polling place would be contingent upon the approval by the Board of Regents of the institution and their determination that such use would not endanger the lives and safety of the students of the school.