

## Opinion No. 62-89

July 17, 1962

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

**TO:** Mr. Louis M. Montoya, Chairman, Board of County Commissioners Court House, Bernalillo, New Mexico

### QUESTION

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How is a tie vote in a primary election for justice of the peace to be resolved?

#### CONCLUSION

By lot.

### OPINION

#### ANALYSIS

In the recent primary election for justice of the peace, Precinct 6, Cuba, New Mexico, the incumbent, Mr. Paul Olivas, and his opponent, Mr. Dan Archuleta, Jr., each received 126 votes.

You ask how the tie vote is to be resolved and you specifically mention Attorney General Opinion No. 5182, dated December 27, 1948. This opinion referred to Section 3-6-14, N.M.S.A., 1953 Compilation, a tie vote statute, and pointed out that this statute was applicable only to candidates for the State Legislature and candidates for county office. The office of Justice of the Peace being a precinct office rather than a county office ( **Territory v. Witt**, 16 N.M. 335, 117 Pac. 860) the lot method of resolving ties was held not to be applicable. The opinion pointed out that in the absence of a statutory procedure for resolving ties, the rule is that there has been no election and the incumbent holds over until the next election. This was the state of the law when Opinion No. 5182 was written.

However, in 1955 the legislature enacted an all-inclusive primary tie vote statute which provides as follows (Section 3-11-62, N.M.S.A., 1953 Compilation (P.S.):

"In the event of a tie between any two candidates running at any primary for nomination for the same office, such tie shall be determined **by lot** and the method and procedure for so settling such tie . . . shall be **the same as now or here-after provided by law for a tie at any general election.** (Emphasis added)

As mentioned the general election tie vote statute is Section 3-6-14, supra, which sets up the following procedure:

". . . the determination as to which of such candidates shall be declared to have been elected shall be decided **by lot** in such manner as may be determined by a committee to consist of **the two opposing candidates** receiving such tie vote, the **county chairman of each of the dominant political parties**, and **the judge of the district court** for such county, or a majority of such committee, and the county canvassing board shall issue certificates of election to the candidate so chosen by lot. (Emphasis added)

Since a tie vote in a primary election between two candidates of the same party affects only that party, it is not contemplated that the county chairman of the other dominant political party be a member of the committee.

To sum up, the tie vote is to be decided by lot, the manner and method of such drawing to be determined by a majority of a committee composed of the District Judge, the two opposing candidates and the chairman of the political party involved.