

Opinion No. 64-111

August 24, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Joel M. Carson, Assistant Attorney General

TO: Mr. Richard H. Folmar, Assistant Director, New Mexico Legislative Council Room 201, State Capitol, Santa Fe, New Mexico

QUESTION

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1. What is the required deadline for registration of voters in a local option election?

CONCLUSION

See Analysis.

OPINION

ANALYSIS

Section 46-3-1, N.M.S.A., 1953 Compilation provides the procedures which must be followed in conducting a local option election to determine if the local option district will be allowed to sell alcoholic beverages. Any county, or any municipality having a population of over five thousand persons may conduct a local option election. Section 46-3-1 (b), N.M.S.A., provides that the registration shall be shown by the registration books for the last preceding general election corrected to reflect the names of those persons who are eligible to vote in the local option election who were not registered for the general election and to omit the names of those persons who were eligible to vote in the last preceding general election, but who are no longer eligible to vote.

We have been asked when the registration books should be closed to registration prior to the election. Section 3-2-19, N.M.S.A., 1953 Compilation, provides:

"The county clerk shall receive affidavits of registration at all times except that he shall close registration at five (5) o'clock p.m. on the thirtieth day preceding **any** election at which the registration books are to be furnished to the judges of election and shall reopen such registration on the Monday following such election . . ." (Emphasis supplied).

In Opinion of the Attorney General No. 58-40, February 21, 1958 this office had occasion to review the above mentioned section 3-2-19 to determine if its provisions were applicable to municipal elections. We held that in municipal elections, the

registration books were to be closed at five o'clock P. M. on the thirtieth day preceding the holding of the election. The reasoning upon which that opinion was based is sound and we hereby reaffirm its holding. Unless some other provision of the statutes would take a local option election out of the purview of section 3-2-19 its limitation on registration must govern the local option election.

We find nothing which would lead us to believe that the requirements of Section 3-2-19 do not apply to local option elections. Our attention has been called to the provision of N.M.S.A., Section 46-3-1 (b), which is quoted as follows:

"Any qualified voter may, at any time after the holding of the last preceding general election, and not later than ten (10) days prior to the holding of the election, apply to the district court of the county wherein the election is to be held to correct or purge such registration as herein provided. The district court shall immediately consider any such petition, and, if it appears therefrom that any names should be stricken or added, shall order the clerk to correct, add to and purge the same accordingly, and the clerk shall make final corrected copies of said registration list available to the proper election officials the day of the election. Any order of the court so made shall remain under the control of the court until ten (10) days prior to said elections."

This section does not purport to extend the time for the registration of voters in a local option election, but merely provides the mechanism whereby a qualified voter may seek redress if his or her name is not added to the registration lists. The section must be read in conjunction with N.M.S.A. 3-2-19. If the voter's name has not been added to the list prior to the closing of the registration books and the voter has registered prior to that time he may have his name added to the lists by following the procedure outlined in Section 46-3-1 (b), N.M.S.A., supra. We must therefore conclude that the registration books for a local option election should be closed at five o'clock p.m. on the thirtieth day preceding the holding of the election.