

Opinion No. 65-16

February 1, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Thomas A Donnelly, Assistant Attorney General

TO: Mr. Richard C. Barela, Superintendent, La Joya Consolidated Schools, La Joya, New Mexico

QUESTION

FACTS

The La Joya School Board has three vacancies which must be filled by a school election of February 2, 1965. Two vacancies are for a six year term, and one vacancy is for a four year term due to the death of a board member. The board in its proclamation to the electorate and announcing the election stated that candidates filing for the six year term or the four year term must specify at the time of filing as a candidate which term they are filing for as a board candidate. After the deadline for filing, only one person filed for the four year term and four persons filed for the six year term.

QUESTION

Some dispute exists under the facts as stated as to whether the person receiving the third highest number of votes cast at such election is entitled to be certified as elected to the four year term. How is the board to determine which persons have been elected to the two six year terms and the one four year term upon such school board?

CONCLUSION

1. The two persons running for the six year term positions on the board who receive the highest number and next highest number of total valid votes cast at such election for the six year term positions shall be certified as elected to the two six year board positions.
2. The person running for the four year term position on the board and who receives the highest number of total votes cast at such election for such four year position shall be certified as elected to the four year board position.

OPINION

{*27} ANALYSIS

We are advised that the La Joya Consolidated School District is an Independent School District which previously has consolidated with other independent school districts.

The applicable statutory provisions pertaining to Independent School Districts and their elections procedure are set forth in Section {*28} 73-9-16 N.M.S.A., 1953 Compilation, which provides as follows:

"Election procedure for Board Members of Independent Districts. -- The procedure for the election of such members of the board shall be the same as that prescribed for the election of directors in municipal districts."

Turning to the applicable provisions of the Municipal School District law, we find that Section 73-10-2 N.M.S.A., 1953 Compilation and Section 73-10-3 N.M.S.A., 1953 Compilation provide for the election of school board members and for the filing of vacancies.

Section 73-10-5, supra, specifies the manner in which school elections will be held and conducted, and provides in applicable part that:

"On the first Tuesday in February in each odd numbered year, the qualified electors of the district and territories attached thereto for school purposes shall elect at large one or two members of the said board as the case may be (except as provided in the section next preceding) to succeed those now holding office whose terms expire. The election shall be called by the municipal board of education **and shall be called, conducted, returned and canvassed by the board** as in the case of officers in the respective incorporated cities, towns and villages. * * *" (Emphasis added).

Section 73-10-2, supra, sets out that:

"Except as otherwise provided by law, municipal school districts and the public elementary and high schools therein shall be governed by a board of education in the name of the "Board of Education . . . and as such, except as otherwise provided, shall have like powers over the schools and districts within its jurisdiction as those possessed by county boards of education over their respective schools and districts. **In addition, the municipal boards of education shall have power to fill vacancies in their membership, by majority vote of the members of the board, the appointee to hold office until the next succeeding election for members of such board.** In the event that the remaining members of the board cannot reach agreement on a replacement to fill any vacancy, or vacancies, for a period of sixty days after said vacancy, or vacancies, has occurred, a special election shall be called within thirty days in the same manner as provided for the election of regular school boards." (Emphasis added).

Previously, this office has ruled that upon the death of a member of a municipal board of education the replacement is elected for the unexpired term of the deceased board member and not for the full six year term. See Attorney General Opinion No. 57-4, dated January 14, 1957.

As noted in Section 73-10-5, quoted supra, the procedure for conducting municipal school elections is spelled out and such declares that the method is the same as in the

case of elections for incorporated cities, towns and villages. Looking to Sections 14-14-1 through 14-14-5 N.M.S.A., 1953 Compilation, the election procedure for such incorporated entities is set forth. This statute instead of delineating the answer refers us once more to another statute, stating:

"The trustees or council of every municipal corporation shall appoint the judges and clerks of municipal elections and . . . **all elections for municipal officers shall in all respects be held and conducted in the manner prescribed by law in cases of county elections.** * * *" (Emphasis added).

{*29} Following the dictates of this section we have searched the statutes for the reference as to the method of conducting county elections and find that no **clear** statute apparently exists referring to the method for conducting county elections. However, in **Telles v. Carter**, (1953) 57 N.M. 704, 262 P. 2d 985, our Supreme Court noted that certain municipal election procedures were controlled by the general election laws. This was also the result concluded in Attorney General's Opinion No. 65-14, dated January 27, 1965.

Section 3-3-1 N.M.S.A., 1953 Compilation, refers to the giving of notice of election for county or statewide elections, and speaks of the proclamation which is to be issued announcing such elections. We think that insofar as the procedure for issuing such proclamations of election is concerned such school district would follow the provisions of Section 14-14-3, supra. A careful examination of the above statutes pertaining to election proclamations leads us to the conclusion that the school board has the power to specify in its election proclamation that candidates filing for office must state whether they are running for either a six year term, or the four year term to fill the vacancy. This was, as we are given to understand, the practice that your board followed in announcing the election and in publishing the election proclamation. We think this was correct and that candidates filing for such office are bound by this election notice as to the particular board term they are seeking.

Thus, we conclude that the two persons running for the six year term positions on the board who receive the highest number and next highest number of total valid votes cast at such election for the six year term positions should be certified as elected to the two six year board positions. Additionally, the person running for the four year term position on the board and who receives the highest number of total votes cast at such election for such four year position shall be certified as elected to the four year board position. In the case of any write in candidates should they receive the highest number of votes for either the six year board positions or the four year board position they would be entitled to be certified as elected to the board position which the write in ballots particularly specified.