

Opinion No. 65-24

February 8, 1965

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

TO: Mr. Davenport Beasley, Acting Superintendent, Clovis Municipal Schools, Clovis, New Mexico

QUESTION

QUESTIONS

1. What procedures are to be followed during a school bond election, when at the close of the polls, potential voters, both inside and outside the polls have not had the opportunity to vote?
2. Are school bond election ballots required to be numbered?

CONCLUSION

1. See Analysis.
2. No.

OPINION

{*42} ANALYSIS

The existing statutory references describing the manner in which school elections are to be conducted are analogous to the labyrinth of Crete which confined the Minotaur. The myriad of references applicable to school election proceedings was discussed at length in our prior Opinions Nos. 63-8, dated February 1, 1963, 65-14, dated January 27, 1965, and 65-16, dated February 1, 1965, wherein it was noted that Section 73-10-5, N.M.S.A., 1953 Compilation specifies the manner in which school elections will be held and conducted, and makes reference to municipal elections discussed in Section 14-14-9, N.M.S.A., 1953 Compilation, and the latter section directs our attention to the method followed in county elections. From this point, as held in Attorney General's Opinion Nos. 65-16 and 63-8, we are to follow the election methods prescribed in the general election laws.

However, it should be immediately noted that the method for conducting **school bond** elections is somewhat different from the method for conducting **school board** elections.

Sections 73-8-21 through 73-8-35, N.M.S.A., 1953 Compilation specifically pertain to the means of conducting school bond elections, and Section 73-8-28, thereof generally makes reference to the manner of conducting school bond elections. This section sets in part:

"Conduct of election -- Count -- Form of certificate of result. -- The hours for casting votes at said election shall be from eight A.M. until six P.M. One ballot shall be delivered to each qualified voter of the district presenting himself to vote, and after he marks the same it shall be folded by him and placed in the ballot box by the judges of the election. At the close of the election, the said judges shall publicly count the vote cast and replace the voted ballots in the ballot box and seal and return same to the authority from whom it was received. The judges shall execute and deliver forthwith to the said authority a certificate of result of election. . . ."

In the above section it directs that the polls for school bond elections shall close at 6:00 P.M., while polls at the election of school board members at school elections close at 7:00 P.M. In **Johnston v. Board of Education of Portales School District**, (1959) 65 N.M. 147, 333 P.2d 1051, the New Mexico Supreme Court discussed at length the nature of school bond elections and the requirements to vote therein. In this case it was noted that generally speaking the restrictive provisions applicable to qualifications {^{*43}} and procedures for voting in special elections have no specific application to school bond elections, and observed that although there is no express constitutional or statutory requirement of registration as a condition to voting in a special school bond election, a voter need not be registered but must be an otherwise qualified elector and own real estate within such school district.

From a careful study of the above case, school election laws and the applicable statutes pertaining to school bond elections we find no express provision governing the procedure to be followed during such election when the prescribed time or closing the polls arrives and potential voters are both inside and outside the polling place. However, we conclude that the practical solution as well as the apparent legislative intention in these instances is that the provisions of the general election code, Section 3-3-27 N.M.S.A., 1953 Compilation, should be followed.

Section 3-3-27 N.M.S.A., 1953 Compilation, we hold then opens the door to the labyrinth and governs your first question in respect to the procedures to be followed at the close of the polls at 6:00 P.M. This section states in part:

"Attendance of election officials at polling place -- Preliminary duties -- Opening and closing polls. -- The election officials must present themselves at the polling place not later than seven-thirty on the morning of the election day. * * * The polls shall be closed at seven o'clock in the evening, and **no voter shall be admitted to the polling place after that time; however, voters present inside the polling place, who have had their names entered on the poll book, shall be allowed to cast their ballots.**" (Emphasis supplied).

We think that the provision set forth in Section 3-3-37, supra, specifying that "voters present inside the polling place who have had their names entered on the poll book, shall be allowed to cast their ballots", is the correct method of arriving at a solution to your first question -- although we specifically note that in school bond elections the polls are required by Section 73-8-28, supra, to close at the hour of 6:00 P.M. instead of 7:00 P.M. as is otherwise the case in school board elections and special elections.

Replying to your second question, we find that our prior Attorney General's Opinion No. 58-128, dated June 16, 1958, discussed such problem and held that there is no express statutory requirement that the ballots used in a school district bond election be numbered. Recently, Attorney General's Opinion No. 65-10, January 22, 1965, held that in school board elections, governed by the general election statutes, ballots must be numbered consecutively beginning with the number "1" as required in Section 3-3-7 (G) N.M.S.A., 1953 Compilation.

Since as noted above in our discussion of your first question, there exists a clear distinction between the election procedures followed in school board elections and school bond elections, we see no reason to alter our prior Opinion No. 58-128, which held that school bond election ballots need not be numbered. In fact, Section 73-8-26 N.M.S.A., which spells out the statutory form for school bond election ballots specifically interdicts against the use of numbered bond ballots. Section 73-8-26, supra, sets out in part:

"* * * Only such ballots as are substantially in conformity to the form herein specified shall be cast, counted or canvassed **and no ballot containing any identification mark or qualifying words or statements shall be counted.** * * * (Emphasis supplied).

The section quoted above declares {*44*} that ballots which contain "any identification mark" shall not be counted. We construe this statutory provisions to prohibit the numbering of school bond election ballots. This statutory direction, although directly contrary to the practice prescribed in school board elections is controlling because of the specific nature of the statute involved.