

Opinion No. 66-09

January 18, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General James V. Noble, Assistant Attorney General

TO: Mr. George T. Roybal, City Clerk, P. O. Box 909, Santa Fe, New Mexico

QUESTION

QUESTION

What is the last day for filing a declaration of candidacy for municipal office under the provisions of Section 14-8-8, N.M.S.A., 1953 Compilation (P.S.)

CONCLUSION

See analysis.

OPINION

{*11} ANALYSIS

Section 14-8-8 N.M.S.A., 1953 Compilation (P.S.) is a portion of the recently enacted municipal code. The applicable portion reads:

"A. After the publication of the notice of the election and before 5:00 p. m., **not less than** thirty days before the day of election, a candidate for municipal office shall file a declaration of candidacy in the office of the {*12} municipal clerk. . . ." (Emphasis added.)

In the year 1966 the municipal elections required to be held will be conducted on March 1st. The language above emphasized is the reverse of usual language concerning time, which language ordinarily provides for certain results after the lapse of a specified period of time. Under such a usual provision, Section 1-2-2 (Seventh) N.M.S.A., 1953 Compilation (P.S.) would apply which reads as follows:

"Seventh. In computing time the first day shall be excluded and the last included, unless the last falls on Sunday, in which case the time prescribed shall be extended so as to include the whole of the following Monday."

Opinion No. 64-91, Report of the Attorney General, 1963-1964 discussed the above method of computing time, and cites **Garcia v. J. C. Penney Co.**, 52 N.M. 410, 200 P.2d 372.

We are here confronted with the reverse situation. If, following the provisions of 1-2-2 (Seventh), supra, and the general rules set forth in Opinion No. 64-91, supra, we count backwards and exclude the day of the election and count the last day (still counting backwards) we reach the date of January 30, 1966, which is a Sunday. Under the usual rule and method of computing time, the next Monday would be considered as the last day upon which the event would be considered as occurring. Since we are reversing the procedures, we would not go to the Monday following the Sunday, since this would have the effect of shortening rather than increasing the period of time between the declaration and election. Following this theory, the last day for filing a declaration of candidacy for municipal office would be on Saturday, January 29th.

In this connection, it is noted that the clerks of many municipalities do not maintain office hours on Saturdays. Although, on January 29th the clerk's office should be open, a candidate desiring to be on the safe side should, unless certain that the clerk's office will be open on January 29th, file his declaration on January 28th. **The municipal clerk would, in view of the language "not less than", be required to accept such declarations of candidacy.**

It is specifically noted that much of the above may be or might have been modified by the language of the election notice of a particular municipality so as to provide a filing deadline time **prior to** January 29, 1966. Therefore, the election proclamation should be carefully checked to determine if some reasonable filing date prior to the 30th day of January and subsequent to the publication of the election notice, may have been set.