

Opinion No. 66-03

January 11, 1966

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

TO: Mr. Don Hancock, City Attorney, Alamogordo, New Mexico

QUESTION

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May a municipality consolidating voting divisions within a precinct for voting in a general municipal election employ more voting officials than those prescribed for a single voting division?

CONCLUSION

Yes.

OPINION

{*3} ANALYSIS

We are concerned with the consolidation of several voting places within a precinct into one voting place. This will normally cause a greater number of votes to be cast at the polling place than would be the case at a general election. Additional registration books from the consolidated voting divisions must be consulted as well as those for the particular division where the actual voting is taking place. The increased number of voters, as well as the necessity of consulting a large number of registration binders to determine if the person desiring to vote is eligible, increases the work of the voting officials. If, under the new municipal code additional voting officials may be employed, the voting can be expedited.

The New Municipal Code was adopted by the last session of our legislature and appears as § 14-1-1, et seq., N.M.S.A., 1953 Compilation (P.S.). Section 14-8-1 of the Code permits the consolidation of the voting divisions within a precinct. Section 14-8-10, of the Code provides for the appointment of **not less** than one judge and **not less** than two clerks of election for each polling place.

It is stated in Southerland Statutory Construction, (3rd Ed.) Vol. 2, Section 4701, page 333, as follows:

"Where the intention of the legislature is so apparent from the face of the statute there can be no question as to the meaning, there is no room for construction."

It is further stated in Section 4702, page 334, *supra*, as follows:

"These rules are, of course, appropriate when the words of a statute are plainly expressive of an interest not rendered dubious by the context of the act. The court in interpreting the act must declare it according to the words of the act for they are in fact expressive of the sense and intent of the act and any other interpretation would thwart that interpretation."

Within the limits of the above rule of statutory construction and before judicial interpretation may be resorted to, it must be shown that the language of the section to be interpreted, is in itself ambiguous or that an ambiguity is created by its language when considered in light of one or more other sections of the act {4} of which it is a part. Additionally the language of the act itself, considered in its entirety, may be such that a literal interpretation would frustrate the disclosed intention of the legislature. There is here no conflict with any other section of the Municipal Code concerning election officials nor with the sense of the act in its entirety. The words "not less than" are not in themselves ambiguous nor is their usage within the framework of the section, or of the act, ambiguous. **Hendricks v. Hendricks**, 55 N.M. 51, 226 P. 2d 464.

Black's Law Dictionary, (3rd Ed.), page 1256, defines "not less than" as "signifies the smallest or lowest degree, at the lowest estimate; **at least**." (Emphasis added.)

Words and Phrases (Perm. Ed.), Vol. 28A, pages 441 et seq., give various definitions depending upon the context, but all with the same general meaning as set forth in **Black's Law Dictionary**, *supra*.

There being, therefore, no ambiguities which require construction, the plain and literal meaning of the words will be given effect. There must, therefore, be **at least** one election judge and **at least** two election clerks at each polling place; **there may be as many more** as the governing body of the municipality deems necessary and advisable in order to conduct the election as properly and expeditiously as possible.