

Opinion No. 66-19

February 2, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Mr. J. C. Enloe, City Attorney, Socorro, New Mexico

QUESTION

FACTS

Pursuant to Section 14-8-4 of the Municipal Code, a notice of the municipal election to be held on March 1, 1966, was duly published. It now develops that only one candidate for each position to be filled filed a declaration of candidacy within the allotted time period.

QUESTION

Based on Section 14-8-12 of the Municipal Code does an election have to be held?

CONCLUSION

Not under the facts as stated.

OPINION

{*22} ANALYSIS

Involved in your question are two paragraphs of Section 14-8-12, N.M.S.A., 1953 Compilation (P.S.) namely, C and D. The former provides as follows:

"If no more than one [1] candidate qualifies for each office and position to be filled, the candidate for each office and position shall be declared elected without a vote upon certification by the municipal clerk.

The latter provides as follows:

"If a vote is conducted on electing candidates for office, space shall be allowed on each ballot for a qualified elector to write in the name of one [1] candidate for each office and position to be filled."

It is a fundamental rule of statutory construction that all parts of an {*23} act must be construed together and, if possible, reconciled and effect given to each provision.

Tudesque v. New Mexico State Board of Barber Examiners, 65 N.M. 42, 331 P. 2d 1104; **Kendrick v. Gackle Drilling Co.**, 71 N.M. 113, 376 P. 2d 176.

The two provisions here in question can be reconciled. The key phrase in paragraph D is "If a vote is conducted on electing candidates for office." Now, paragraph C has already prescribed that there is no vote for an office or position for which only one candidate has qualified. Rather, the one candidate is declared elected without a vote upon certification by the municipal clerk. If the candidates for every office or position have been so certified, since they had no opponents, a vote on electing candidates for office would be useless. Therefore, an election would not be necessary **unless** another question had been placed on the ballot by the governing body. See Section 14-8-3, N.M.S.A., 1953 Compilation (P.S.).

In order not to inconvenience the electorate an attempt should be made to disseminate the information that the election is not going to be held. You should wait for the final withdrawal date before making such a public announcement because if any of the one candidates for any of the positions withdraws, the situation changes. If there are no candidates for one or more positions or offices to be filled, then the write-in space provision is to be followed.

We will go one step further, not because it is necessary to answer your question, but because it has been posed at least informally by other municipalities.

Where an election is to be held because there is at least one office or position where two or more candidates have declared, the write-in provision is not applicable to the other offices or positions which have only one declared and qualified candidate -- this for the reason that the particular office or position has already been filled by certification without a vote.