

## Opinion No. 67-15

January 25, 1967

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Honorable Patrick F. Hanagan District Attorney Fifth Judicial District Roswell, New Mexico

### QUESTION

#### QUESTIONS

1. Assuming that all five of the commissioners of a municipality are recalled at the same recall election, what official or group can and will assume responsibility for conducting the day to day affairs of the municipality, including the appropriating of funds and issuance of checks?
2. May a person who has signed a recall petition remove his name from the petition after the petition has been properly filed.

#### CONCLUSIONS

1. Generally speaking, the municipal clerk.
2. No.

### OPINION

#### {\*19} ANALYSIS

Section 14-13-16, N.M.S.A., 1953 Compilation (P.S.), a portion of {\*20} the Municipal Code, provides that:

"If all commissioners are recalled at the same election, the municipal clerk, or if there is no municipal clerk, the district court shall **within three days** call an election as provided in section 14-13-8 New Mexico Statutes Annotated, 1953 Compilation, for the election of five commissioners."

The problem which you raise arises from the fact that the publication of the notice for a municipal election must be not more than sixty days nor less than forty-five days before the date of the election.

During this interim period the municipal clerk should issue warrants to pay city employees for services rendered and to pay for supplies, etc., already received or ordered. However, the municipal clerk should not exercise any powers which require

commission approval, and which approval was not obtained prior to the recall of the commission.

It is possible that there might not be a municipal clerk during the interim period because of death or resignation. In that case the district attorney's office, the city attorney's office, or any other interested person or group which has standing in court should petition the court for an order naming a fiscal agent for the municipality during the interim period.

In answer to your second question, one signing a petition for an election may withdraw his name prior to the proper filing of the petition but not thereafter. **Poole v. Tiner**, S.C., 38 S.E. 2d 650; **State v. City of Walnut**, Kan., 201 P. 2d 635; **Commonwealth v. Fife**, 1 Ky., 156 S.W. 2d 126; **Hawkins v. Carroll**, S.C. 1 S.E. 2d 898; **Baker v. Reeves**, N. J., 157 Atl. 174; **State v. Bateman**, S.D., 244 N.W. 357; **Coyte v. King**, N. J. 168 Atl. 158.

By: Oliver E. Payne

Deputy Attorney General