

## Opinion No. 68-20

February 12, 1968

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

**TO:** Mrs. Gertrude Allen Clerk Village of Corona Corona, New Mexico

### QUESTIONS

Must a municipal election be held when only one position is to be filled and only one candidate has filed for the position to be filled?

### CONCLUSION

See analysis.

### OPINION

#### {\*37} ANALYSIS

Prior to 1967, Section 14-8-12, N.M.S.A., 1953 Compilation of the Municipal Code provided in part as follows:

"B. Any election for commissioners under the commission-manager form of government shall be non-partisan and the names of all candidates for office shall be listed on the ballot without party or slate designation. The order on the ballot of the names of the candidates for each office and position shall be determined by lot.

C. If no more than one 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.

**D. 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 candidate for each office and position to be filled." (Emphasis added).

In 1966, this office issued Opinion No. 66-19, stating that the written provision of subsection D, quoted above was not applicable to offices or positions which had only one declared and qualified candidate. Thus if the election was to be held for one position and only one candidate filed for that position, an election need not be held. The candidate was to be certified as elected by the municipal clerk.

In 1967, the legislature deleted all of subsection C and the underscored portion of subsection D from Section 14-8-12, supra. It obviously was the intention of the legislature to now require that an election be held even though there is only one position

to be filled and only one candidate has filed for that position. No longer may {<sup>38</sup>} a candidate be certified as elected without a vote of the people. However as will be seen below this is only applicable to elections held by municipalities with a mayor-council form of government.

Section 14-13-7, N.M.S.A., 1953 Compilation provides as follows:

"Commission-manager -- Candidates for office -- Write-in ballots. -- If no more candidates qualify for office than there are vacancies to be filled, they shall be declared elected without a vote, upon certification by the municipal clerk. If there is no candidate for office, the ballot shall be printed without names and a voter may write in the name of a qualified elector upon the ballot."

This is essentially the same language as was found in Section 14-8-12, supra, prior to the 1967 amendment of that section. The reasoning and conclusion reached in Opinion No. 66-19, supra, is therefore still applicable when an election is held by a municipality with a commission-manager form of government.

Since Corona has a mayor-council form of government an election must be held even though there is only one position to be filled and only one candidate has filed for the position.

By: Gary O'Dowd

Assistant Attorney General