

Opinion No. 71-03

January 18, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Norbert C. Lopez Superintendent of Schools Espanola Municipal Schools P.O. Box 249 Espanola, New Mexico

QUESTIONS

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1. Can a school board create a voting division, and
2. If so, can such voting division be created by a school board subsequent to notice and proclamation of election for school board members but prior to the election of such school board members?

CONCLUSION

1. No.
2. No.

OPINION

{*4} ANALYSIS

I understand that pursuant to the applicable provisions of the statutes, notice and proclamation of an election for school board members in Rio Arriba Espanola School District No. 45 was duly issued and published on or about December 15, 1970, and all other machinery required by the statutes has been put into motion for the holding of an election for school board members on February 2, 1971.

I further understand that at a school board meeting held on January 14, 1971 the board voted to create a separate voting division for the purpose of said school board election, at the Santa Clara Indian Pueblo.

The statute in question, Section 77-5-4, N.M.S.A., 1953 Comp. seems to allow the consolidation of **existing** divisions, and the exclusion from Board Elections of portions of divisions that lie outside the school district, but does not seem to give the Board the power to **divide up old divisions** which lie **completely within the district**.

Next, the statute governing publication of notice of the election is very clear. Section 77-5-2(B), **supra**, requires that the notice be published no less than 45 days prior to the

election, and that the notice contain, **inter alia**, "a brief description of the boundaries of each voting division." The notice that was published on or about December 15, 1970, did not contain such a description of the proposed new voting division. The election is scheduled for February 2, 1971, and thus no notice published now could be timely.

Thus, the answer to both questions are rather clearly "no," and I would suggest that you proceed with your election on February 2 pursuant to the notice and proclamation issued and published on or about December 15, 1970.