

Opinion No. 73-06

January 18, 1973

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Honorable Claron E. Waggoner District Attorney Seventh Judicial District P. O. Box 917 Socorro, New Mexico 87801

QUESTIONS

QUESTIONS

Will it be necessary to hold an election for the office of member of the Board of Education where only one candidate has filed for each position to be filled?

CONCLUSION

Yes.

OPINION

{*11} ANALYSIS

Section 77-5-1, NMSA, 1953 Comp., provides that a regular school district election shall be held to elect qualified persons to membership on a local board on the first Tuesday in February of each odd-numbered year. Section 77-5-9, NMSA, 1953 Comp., provides that ballots shall be furnished by the local school board and shall contain the name of each candidate for a position on the local school board in school board elections. Furthermore, subsection "D" of this law states that "[s]pace shall be provided on each ballot for an elector to write in the name of one candidate for each position to be filled" and, Section 77-5-13, NMSA, 1953 Comp., directs the election officials to conduct the school district election in the manner provided in the Election Code for the conduct of general elections.

In a general election the candidate with the largest number of votes is declared to be the winner, Article VII, Section 5, New Mexico Constitution and Section 77-5-15, NMSA, 1953 Comp. And we find no provision in the Election Code allowing certification of the results of the general election without an election having been held. See Sections 3-12-52(A), 3-13-14 and 3-13-17, NMSA, 1953 Comp.

In municipal elections in municipalities following the commissioner-manager form of municipal government, if no more than one candidate qualifies for an office to be filled, the candidate is to be declared elected, without a vote, upon certification by the municipal clerk. See Opinion of the Attorney General No. 66-19, dated February 2,

1966. The question presented in that Opinion involves two paragraphs of Section 14-8-12, NMSA, 1953 Comp., the second of which 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 candidate for each office in position to be filled."

But the first provision in this section states:

"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."

In concluding that no election is necessary in the case of municipal elections where only one candidate files for each position, Opinion No. 66-19 relies upon ^{*12} the phrase "[i] f a vote is conducted on electing candidates for office." (Emphasis added.) Pursuant to this language the Opinion states that since the first paragraph provides that there is to be no vote for an officer position for which only one candidate qualifies, the one candidate qualifies, the one candidate is declared elected without a vote upon certification by the municipal clerk if candidates for every office position have been so certified. According to that opinion, any other conclusion would result in a "useless" election.

Opinion of the Attorney General No. 69-40, dated May 8, 1969, discusses Opinion No. 66-19 in relation to elections for the office of delegate to the constitutional convention. This Opinion concludes that a provision similar to that quoted above in Opinion No. 66-19 would have to be found in the law providing for the constitutional convention before an unopposed candidate for delegate to the constitutional convention could be certified as elected without an election

Since the law pertaining to school district elections, like the law pertaining to the constitutional convention, does not contain a provision such as that in the municipal election law it is our opinion that an election must be held in school district elections even though only one candidate has filed for each position to be filled.

By: Leila Andrews

Assistant Attorney General