

Opinion No. 77-17

June 1, 1977

OPINION OF: Toney Anaya, Attorney General

BY: Patricia "P.J." Turner, Assistant Attorney General

TO: Richard H. Folmar, Assistant Director, New Mexico Legislative Council, 334 State Capitol, Santa Fe, New Mexico 87503 and David W. Bonem, Ninth Judicial District Attorney, Roosevelt County, Second Floor Courthouse Portales, New Mexico 88130

ELECTIONS; LOCAL OPTION DISTRICT ELECTIONS; ABSENTEE VOTING;
ABSENT VOTER ACT-Absentee voting must be permitted in local option district elections conducted pursuant to Section 46-3-1 N.M.S.A. 1953 Comp.

QUESTIONS

Must absentee voting be permitted in local option district elections conducted pursuant to Section 46-3-1 N.M.S.A. 1953 Comp.?

CONCLUSIONS

Yes.

ANALYSIS

Section 46-3-1 N.M.S.A. 1953 Comp. sets forth the procedures for a local option district election. Section 46-3-1(c), supra, provides:

Such elections shall be conducted in the manner provided by law for general elections within said county or city, except as herein provided.

OPINION

In order to determine the applicable law for local option district elections referred to in the above-quoted provision, we must consider the terms of the provision. Section 46-3-1, supra, provides that local option elections "shall be conducted in the manner provided by law for general elections . . ." (Emphasis added) Webster's Third New International Dictionary, p. 1376 (1961) defines "manner" as "the mode or method in which something is done or happens: a mode of procedure or way of acting." This definition is supported by case law. See, for example: McKinney v. McKinney, 59 Wyo. 204, 135 P.2d 940 (1943); State ex rel. Stamm v. Mayfield, 340 S.W.2d 631 (Mo. Sup. Ct. 1960).

{*124} The term "general election," as commonly used and understood, has been defined as the biennial election held throughout the state for choosing state and county

officers and national representatives in the Congress. *Benson v. Williams*, 56 N.M. 560, 246 P.2d 1046 (1952); *Territory of New Mexico v. Ricordati*, 18 N.M. 10, 132 P. 1139 (1913). See also: Article XX Section 6, New Mexico Constitution.

Section 3-1-18 N.M.S.A. 1953 Comp. provides that the New Mexico "Election Code," Sections 3-1-1 through 3-21-17 N.M.S.A. 1953 Comp., is applicable to general elections. Thus, we would first conclude that the "law for general elections" referred to in Section 46-3-1, supra, is the "Election Code," Sections 3-1-1 through 3-21-17, supra. See *State ex rel Denton v. Vinyard*, 55 N.M. 205, 230 P.2d 238 (1951). Accordingly, we would next conclude that the "Election Code" provisions set forth the procedure to be followed in local option district elections, except as otherwise provided in Section 46-3-1, supra. To the extent that Opinion of the Attorney General No. 75-27, dated April 14, 1975 indicates that local option district elections are held pursuant to the Municipal Code, Sections 14-8-1 et seq., N.M.S.A. 1953 Comp., it is hereby overruled. We would emphasize however, that Opinion, No. 75-27 states that the Municipal Election Code "requires that municipal elections be conducted in the manner provided in the Election Code, Section 3-1-1, et seq., N.M.S.A. 1953 Comp., thereby reaching the same conclusion reached herein, that the "Election Code" is applicable to local option district elections.

In further support of this conclusion, we would refer you to Section 3-1-18, supra, which was amended by Chapter 222, Laws of 1977, effective June 17, 1977, to read:

B. To the extent procedures are incorporated or adopted by reference by separate laws governing such elections, or to the extent procedures are not specified by such laws, certain provisions of the Election Code shall also apply to:

(3) special district officer or special district bond or other special district elections.
(Emphasis added)

We submit that Section 3-1-18(B), supra, is clear evidence that the provisions of the "Election Code" are applicable to local option district elections.

Article VII, Section 1, New Mexico Constitution provides in part that: "The legislature may enact laws providing for absentee voting by qualified electors." Sections 3-6-1 through 3-6-17 N.M.S.A. 1953 Comp., known as the "Absent Voter Act," set forth the requirements and procedures for absentee voting in general elections. The "Absent Voter Act" is a part of the "Election Code" which we concluded above is applicable to local option district elections. Finding that Section 46-3-1, supra, does not provide otherwise, we ^{*125} conclude that the "Absent Voter Act," Sections 3-6-1 through 3-6-17, supra, is applicable to local option district elections, thereby directing the absentee voting procedures to be followed in such elections.

ATTORNEY GENERAL

Toney Anaya, Attorney General