

Opinion No. 13-1127

October 24, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Mr. F. L. Mehlop, Town Clerk, Dexter, New Mexico.

ELECTIONS.

Procedure in case of a tie vote at an election held under provisions of Chapter 75, Laws of 1913.

OPINION

{*309} Yesterday I received your letter of the 20th inst. and take the first moment I have had to answer.

You ask, in substance, whether a second election under Chapter 75 of the Laws of 1913, can properly be called after the first election has resulted in a tie vote, and whether such second election would be valid, in spite of the provision of Section 5 of that act that "Such question shall be submitted but once every four years and then only upon petition filed as herein provided."

A literal reading of that section would seem to forbid any second election in your town until four years after July 22, 1913, when the election which resulted in a tie was held. I cannot be sure, however, that this construction of the statute is justifiable when we take into consideration the general spirit and intent of the act. The legislature clearly intended not only that the question should be submitted to the voters, but that it should be decided by the voters, and a submission {*310} which has no result can properly, within the meaning of this statute, be treated as a nullity, and the further submission to the people at another election would be absolutely necessary in order to obtain a decision.

I will not say, however, that this is entirely beyond doubt, because other minds might take a different view and, especially, I would not venture to predict with confidence what the courts might hold.

Argument against the correctness of the foregoing views might be made on the ground that the intention of the legislature was to prevent communities from being stirred up, excited and divided on the question of local option, perhaps with great acrimony and asperity, oftener than once in four years, and that that object would be defeated if we were allowed to hold a second election within less than four years, because the first one resulted in a tie. With a town thus evenly divided, there might be a succession of tie elections, and if for that reason successive elections could be held, the town might be kept in a turmoil of excitement for many months. This argument might find some support in the suggestion that the object of any petition for an election must be to change the

existing status as to the sale of liquor, and that when an election resulted in a tie, this might be considered as a finding by the voters that there should be no change. A majority is required to make a change and if that majority cannot be had then the former status would continue. It would seem desirable to have the question judicially settled, and the only practical way to get it into court will be to proceed with the contemplated election.