

## Opinion No. 13-980

January 23, 1913

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. R. H. Sims, Las Cruces, N. M.

### **SCHOOL BOND ISSUE.**

As to objections to bond issue of Board of Education of Las Cruces.

### **OPINION**

{\*144} I have today received your letter of the 21st instant together with another from Mr. Percival Brooks Coffin which I return herewith as you may need it to refer to.

Mr. Coffin states that he based his unfavorable opinion as to your bond issue upon Article IX of the Constitution and also upon an opinion given by me, addressed to Mr. H. M. Dow, City Attorney, Roswell, New Mexico, and that in that opinion I assumed the ground that boards of education could not hold an election of officers until the legislature acts and fixes a time for holding such election separately from any other election, and his conclusion is that the legislature {\*145} has left the boards of education "hung up" so that they can neither act legally under the laws nor under provisions of the constitution which have not yet been made operative.

Mr. Coffin is not exactly correct in his statement of the effect of my opinion to Mr. Dow which I gave him under date of February 13, 1912. I did not say that a board of education could not elect any officers until the legislature should fix the time of such election on a day different from that of the general elections. I did say that the election of members of such a board of education must be considered as a school election within the meaning of Article VII of the Constitution, and that to hold such an election at the same time as the general city election would be inconsistent with the constitution, and that until the legislature fixes the time for holding such election separately from any other election, the present members of the board will continue in office until their successors are qualified, as provided in Section 2 of Article XX of the Constitution, which section declares that "Every officer unless removed shall hold his office until his successor has duly qualified." You will see from this that the members of such boards who are holding over must be considered as having all the power and authority that any board would have.

Another objection urged by Mr. Coffin is that the transcript of record sent to him does not seem to show any women's votes although the constitution provides that women must be given an opportunity to vote at school elections. The constitution provides that women shall be qualified electors at school elections, but it does not follow that they have not been given an opportunity to vote because they did not actually vote. It must

be presumed that every qualified voter who desired to vote had the opportunity of voting, and that if any qualified voter did not vote it was because he or she did not so desire to do. In the same opinion which I gave to Mr. Dow I called attention to this very question as he had asked whether women should be registered as voters with a right to vote at a school bond election, and also at the election of members of the board of education. I said that if there could be a valid election of members of the board it was plain that the constitution gave women the right to vote at such election, but as to the school bond election that the question was not so plain and clear, as there might be room to argue that the intention of the constitution was to specify only elections of school directors or school officers. I said, however, I thought that would be an unwarrantable, narrow and unreasonable construction, and that by school elections the constitution intended to cover all local elections as to the management, control and administration of public schools including the question of the issuance of school bonds.

Mr. Coffin also says that it is a great question in his mind "whether the board of education of the town of Las Cruces is in fact a school district of a municipality," and that this point would cause a great deal of work to get the bonds approved and take months of time as well as attorney's fees. I am not sure that I understand what Mr. Coffin means by this, but I do not know under what statute you are issuing the bonds, and possibly information on that point would enable me to understand what he means. If the bonds are issued under the provisions of Section 1584 of the Compiled Laws of {\*146} 1897, then it is certainly impossible for me to understand Mr. Coffin's objection. That section distinctly authorizes the board of education in any city or incorporated town under certain circumstances to order an election for the issuing of bonds of the school district in the city or town. The boards of education are also authorized to issue bonds to raise funds for the purchase of school sites or the erection of suitable buildings or to fund any indebtedness for school purposes of the city or town.

What appears to me the most serious objection in the estimation of Mr. Coffin is that on account of the rate of interest he does not see profit enough in the bonds to justify his taking them up.