

Opinion No. 14-1201

April 24, 1914

BY: FRANK W. CLANCY., Attorney General

TO: H. B. Jamison, Esq., Assistant District Attorney, Albuquerque, New Mexico.

SCHOOLS.

No registration required at county high school elections, and women may vote at such elections.

OPINION

{*62} Your letter of the 18th inst. was received on Tuesday last, and has not been sooner answered because we have found some difficulty in reaching a satisfactory conclusion upon the principal question submitted by you. This question is as to whether or not registration is necessary in an election for a county high school.

Such an election is provided for in Sec. 2 of Chap. 57 of the laws of 1912. That section makes it the duty of the board of county commissioners, upon the presentation of a proper petition, to call an election to determine the question of establishing a county high school not less than thirty days following the meeting of the board at which the petition is received, and it further provides that:

"Said election shall, in all matters not herein provided for, be called, conducted and the returns made and canvassed as now provided by law for the election of county officers."

It seems clear that the answer to your question about registration is to be found in the interpretation or meaning to be placed upon the word "conduct." Previous to all elections for county officers registration is required as provided in Sec. 1702 of the Compiled Laws of 1897.

The making of a registration, however, is not embraced within the ordinary meaning of the word "conduct" when applied to the election. An election is conducted by the officers, judges and clerks, appointed for that purpose by the board of county commissioners, but as a foundation for the conduct of the election the registration is required, and the furnishing of the registration lists to the election officers. The law makes it unlawful for any person to vote unless his name shall have been registered as a voter, although he may, if not registered, be allowed to vote by tendering an affidavit as to his qualifications sworn to by himself and by two qualified voters of the precinct, as provided by Chap. 64 of the laws of 1903. This makes it one of the duties of the judges of election not to permit an unregistered person to vote unless he presents the affidavit required by the statute of 1903, and it might be said that the discharging of this duty is a part of the conduct of the election. I cannot feel satisfied, however, that this is not a

strained and unreasonable construction of the word "conduct" by which we would compel the performance of acts prior to the actual holding and conducting of the election.

In such investigation as we have had time to make we have not found any reported case which is quite like that which is here presented, { *63 } but we have found cases where, either regarding special elections or elections on special subjects, the courts have been asked to hold that general registration laws so broadly worded as appear to be applicable to all elections, must be followed. In a number of cases courts have declined to take this view because the legislation as to the election under discussion contained provisions inconsistent with those to be found in the general registration law, evincing a legislative intent that there should be no registration. Considerations of this kind strengthen my opinion that in the county high school act there is to be found an indication that the legislature did not contemplate that there should be a registration of voters. The election may be called by the county commissioners to be held only thirty days after the meeting of the board at which the petition is received. The registration statute requires the boards of county commissioners to appoint boards of registration in the several precincts sixty days before any general election. It must be that when the legislature provided for an election which might be held within thirty days, there could not have been in mind the operation of a registration law which required action to be taken sixty days before the election. I am of opinion that no registration of voters is required.

You also ask whether women can vote at such an election. I have no hesitation in answering this question in the affirmative. Sec. 1 of Article VII of the Constitution distinctly declares that women, possessing the residence qualification prescribed for male electors, shall be qualified electors at all school elections, and certainly the determination of the question of the establishment of a high school by a vote of the electors is a school election within any proper definition of that term. It is evident that the legislature took this view in the act itself providing for the election, as the petition is to be signed by one-fifth of the electors of the county, including women qualified as provided in the Constitution.