

Opinion No. 14-1213

May 1, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Honorable Howard L. Bickley, Raton, New Mexico.

ELECTIONS.

Proclamation or publication of notice in a newspaper not required at elections for municipal officers, there being no one authorized to make such proclamation or publication.

OPINION

{*73} I have received your letter of yesterday in which you call my attention to the fact that Sec. 2446 of the Compiled Laws of 1897 provides that elections for municipal officers shall in all respects be held and conducted in the manner prescribed by law in cases of county elections, and you say that in the election held at Raton on April 2, 1914, in considering the time and method of election notices, you looked to the Laws of 1909, Chap. 105, page 279, and particularly to Sec. 1, which provides that county commissioners of each county shall, ten days before the election, by public proclamation and by publishing in each of the two leading newspapers published in the county, give public notice of the object of the election, the officers to be voted for, etc., and that such notice shall be inserted in a weekly newspaper in two issues thereof prior to the date when such election is to be held. You further say that the question has been raised as to whether Sec. 1 of Chap. 79 of the Laws of 1909, which requires all legal notices to be published for four consecutive weeks, applies to the notices of election of municipal officers, and other objects, to be voted upon at municipal elections.

As to this question you say that you are of the opinion that said Sec. 1 of Chap. 79 does not apply to notices of city elections, and I have not the slightest doubt of the correctness of your opinion. As you say, Chap. 79 is a general publication law, while Chap. 105 was a special act relating to elections, and to this we may add that Sec. {*74} 1, of that Chap. 105, fully and completely covers all publication required for the purposes of the election notices. Nothing more than that can be essential to making the proclamation and giving notice in the newspapers. Moreover Chap. 105 is a later act than Chap. 79, and if it does not conform to the earlier act, it is the last expression of legislative will and must control.

Although it is not called for by your letter, yet I feel impelled to say that I am of opinion that the language of Sec. 2446 of the Compiled Laws is not sufficient to require the making of a proclamation or the publication of a notice in a newspaper, as prescribed in Sec. 1 of Chap. 105 of the Laws of 1909. Sec. 2446 declares that "all elections for municipal officers shall, in all respects be held and conducted in the manner prescribed

by law in cases of county elections." Provision is made in Secs. 2443 to 2445, of the Compiled Laws, for the registration of voters in municipal elections, which provisions are different from those as to registration for county elections. Sec. 2443 absolutely prohibits voting by any unregistered person, which also is different from the provision in the general election law. Sec. 2446 provides for the appointment of judges and clerks of election and fixing of polling places by a different authority from that which performs such duties for general elections. The issuing of a proclamation or notice of election is not essential to its validity unless specifically required by law. Sec. 1 of Chap. 105 of the Laws of 1909 does require such a proclamation and publication by the county commissioners in the case of a general election, but there is no one authorized to make such a proclamation or publication for a city election. Certainly the county commissioners are not authorized to do anything of the kind for a city election, and no one else is.

Moreover the language that the election "shall be held and conducted" in the same manner as county elections does not have reference to the antecedent preparatory proceedings, but to what shall be done on the day of the election at the polling places. The election is held and conducted by the judges and clerks of the election, and they must hold and conduct the election in the same way that judges and clerks hold and conduct elections under the general election law.

If these views are correct it seems unimportant whether any proclamation of election was made or any notice given by publication for the election held last month.