

Opinion No. 14-1205

April 27, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Dr. B. E. Hedding, Mountainair, New Mexico.

SCHOOLS.

Procedure at election for establishment of county high school.

OPINION

{*66} I have received your letter of the 25th inst., in which you ask, referring to elections for county high schools, upon what election and upon what basis or what candidate are you to estimate the number of petitioners necessary under the law.

The legislature has not pointed out any method by which the board of county commissioners must ascertain whether the petitioners are in number equal to one-fifth of the electors of the county, including women qualified as provided in the Constitution. The matter appears to be left entirely to the board and the board must satisfy itself as best it can as to whether the electors to the required number of one-fifth have actually signed the petition. It is quite clear that resort to the returns of any previous election, or to the registration of any election, would not be conclusive because women have not voted in any county election. I believe the county commissioners {*67} would be justified in informing themselves in any way that they can so as to decide intelligently on this question. If any person or persons are dissatisfied with the decision of the county commissioners, they may resort to the District Court to obtain an injunction to restrain the county commissioners from calling an election or for a mandamus to compel them to call an election, according to the facts of the case.

If resort should be had to the returns of the last general election in the county, that would assist in ascertaining only the number of male voters. The poll books might not be sufficient because many qualified voters do not vote and the registration books would not be entirely safe, as many names appear on the registration lists of persons not entitled to vote or who have moved away and frequently qualified voters are not actually registered. After ascertaining as nearly as possible the number of male voters, the board would appear to be compelled to estimate the qualified female voters from the best information obtainable.