

## Opinion No. 14-1371

October 23, 1914

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

**TO:** Hon. H. B. Hamilton, Carrizozo, New Mexico.

### **ELECTIONS.**

County commissioners to make proclamation ten days before election. Unlawful to print on more than one party ballot the name of any candidate.

### **OPINION**

{\*232} I have received your letter of the 21st inst., enclosing another from Mr. Charles E. Thomas, Clerk of the County of Otero, relative to the duty of county commissioners as to making the call and proclamation for the election, in accordance with the requirements of Section 1 of Chapter 105 of the Laws of 1909. He calls attention to the fact that that section of the law requires the county commissioners, ten days before the election by public proclamation and by publication in newspapers, to give public notice of the object of the election, which notice shall contain certain other matters of information for the public, and further, that if no daily newspaper is published in the county, the notice may be inserted in a weekly newspaper, and in such case, shall be inserted therein in two issues thereof prior to the election. He calls attention to the fact that the commissioners are authorized to make the proclamation and call only on the tenth day before the election, and that as their papers are published on a Friday and actually printed the day before, it is impossible to get two weekly issues crowded into the ten days between that time and the day of the election.

I am of opinion that the act distinctly requires the commissioners to make the proclamation ten days before the election, and that as a literal compliance with that requirement is possible, it would be unsafe for the commissioners to make the proclamation at any earlier day, and if there is no newspaper published in the county upon dates which would make it possible to get two weekly publications between the date of the proclamation and the day of the election, this could not be held to invalidate the election. I cannot advise that the proclamation should be made on any other day than the one which would be ten days before the election.

Mr. Thomas further asks whether it would be possible to print the name of a Republican candidate for the legislature on the Republican tickets, and also on the Progressive party tickets, he having been endorsed by the Progressive party. The statute on this subject is to be found in Chapter 127 of the Laws of 1905 and in Section 19 of Chapter 105 of the Laws of 1909. Briefly stated, this legislation makes it unlawful, after the names of candidates have been certified by the presiding officer of the convention making the nomination and the secretary thereof and filed with the probate clerk of the

county, for any other convention or person to print, or cause to be printed or circulated, any ticket having thereon the {233} name of any candidate who has been nominated and his name certified as above stated, and filed with the probate clerk. It also requires the county recorder to provide printed ballots at the expense of the county, and to print in the appropriate ballot, the name of every candidate whose name has been certified to or filed with him in the manner provided in the act.

The clear intention of the legislature was to prevent the printing on more than one party ballot, the name or names of any candidate or candidates. Whether this is beneficial and conducive to the public welfare, is not a matter open to discussion or consideration. We are bound by the law as it stands, and I am clearly of opinion that the candidate referred to in the letter of Mr. Thomas can have his name printed only on the ticket of the party which first nominated and certified his name to the county clerk. As to the Progressive ticket, it would seem necessary to leave a blank if it is the fact that the convention of that party made no nomination for that place. It would be no violation of the law to put in the proper place the usual heading, indicating the office to be voted for, leaving a blank where the name of the candidate should otherwise be.

I return herewith the letter from Mr. Thomas.