

Opinion No. 15-1433

February 4, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. F. B. Calhoun, Village Clerk, E. Vaughn, N. M.

As to the holding of an election for the prohibition of the sale of liquor.

OPINION

{*24} I have received your letter of the 3rd inst. asking several questions as to a contemplated election for or against prohibition in your village, all of which I will attempt to answer without repeating any one of them.

The statute under which your election would be held is Chapter 75 of the Laws of 1913, and it does not distinctly provide by whom the election shall be called. Section 2 of that act merely says that upon the filing of the requisite petition the "question shall, by proclamation, be submitted to the electors thereof at a special election to be held not less than one month and not more than two months after the filing of such petition." It appears to me that it would be judicious for the Board of Trustees to authorize and require the Mayor to issue the proclamation, and in issuing the proclamation, he could therein set out that he did so because the necessary petition had been filed and because the Board of Trustees had directed the election to be called.

The election cannot be held at the same time as your regular village election in April, nor can it be held within two months before or after that election. You will find that by Section 2 of the statute it is provided that "No such election shall be held within two months of any other election." The supreme court of the state has recently held that an election of this kind which was held within two months of the time of the election of justices of the peace, was of no validity.

As to the date when the election should be held, I believe it would be well for the Board of Trustees and the Mayor together, to fix the date.

In view of the fact that you could not now properly have an election until two months after the date of your April election, it would appear injudicious to say the least for the petitioners to present any petition at the present time, as the special election must be held not less than one nor more than two months after the filing of the petition. They would better defer the presentation of their petition until such time as it would be possible to fix a date for the election not more than two months after the filing of the petition which would not conflict with the provision that no such election shall be held within two months of any other election.