

Opinion No. 15-1483

March 29, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. W. C. Hoover, Columbus, N. M.

As to elections held by municipalities for the issuance of water or sewer bonds.

OPINION

{*65} I have just received your letter of the 27th inst. calling my attention to Chapter 76 of the Laws of 1912, which is an act authorizing municipalities to issue bonds for water or sewer purposes, as to which you desire to know whether an election for the issuance of such bonds may be held at any time or must it be only at the biennial election of officers.

It is a fundamental rule as to any sort of a public election (and the reason for the rule would be even stronger with regard to an election of this kind), that no election can be held unless distinctly and clearly authorized by law and then only at the time fixed by law. In said Chapter 76 it is provided that the election must be held at the same time as a regular election for councilmen, aldermen or other officers of such city, town or village, by ballots deposited in a separate ballot box. I am of opinion that the bond election cannot be held at any other time than at a regular election for municipal officers.

I think that you are in error in saying that in 1912 the elections were yearly for a part of the board as you will see by reference to Chapters 9 and 93 of the Laws of 1903, together with Chapter 47 of the Laws of 1905, which are all still in force without change. These statutes clearly provide for biennial elections.

You further ask if there is a limitation on water works indebtedness, and the answer to this question is to be found in Section 13 of Article IX of the Constitution of the state. That section declares that no municipality shall ever become indebted to an amount exceeding four per centum on the value of the taxable property within the municipality as shown by the last preceding assessment for purposes of taxation, with a proviso that any city, town or village may contract debts in excess of such limitation for the construction or purchase of a system for supplying water or of a sewer system for such city, town or village. This seems to leave water or sewer indebtedness without any limit, except that which is contained in the next preceding section which forbids the contracting {*66} of any debt except by ordinance which shall provide for the levy of a tax not exceeding twelve mills on the dollar, sufficient to pay the interest on, and to extinguish the principal of, such debt within fifty years.