

Opinion No. 15-1495

April 10, 1915

BY: H. S. BOWMAN, Assistant Attorney General

TO: Mr. Rupert F. Asplund, Chief Clerk, Department of Education, Santa Fe, New Mexico.

As to validity of certain ballots used at election of board of education for the city of Clovis.

OPINION

{*79} Referring to your verbal request for an opinion from this office in regard to the validity of certain ballots used in the election of the Board of Education for the city of Clovis, and to other matters mentioned in the letter of the County Superintendent of Curry County, L. C. Mersfelder, directed to your office, I beg to state that I do not consider it advisable at this time to render an opinion upon these matters. From the two ballots submitted it would appear as if a question will be raised in regard to the validity of the election of those parties named thereon who received the majority of the votes cast, and that in all probability an election contest will be brought by the defeated candidates. As the vote has not yet been canvassed in accordance with the provisions of the statutes, and as none of the candidates have as yet been declared elected by the canvassing board, and have received their certificates of election, this is a matter for the board of canvassers to decide, and if the defeated candidates feel themselves aggrieved by not having been declared elected, their remedy would be by a contest proceeding filed in the courts of the state. This office does not care to anticipate {*80} the action of the board of canvassers, and we would, therefore, suggest that you advise Mr. Mersfelder to that effect.

It also might be advisable to call Mr. Mersfelder's attention to the fact that as county superintendent of schools the matters in question do not come under his jurisdiction, and that perhaps it would be better for him not to permit himself to be drawn into any controversy of this nature.

For your information, however, I might suggest that there is some question as to the validity of any of the ballots printed according to the forms submitted, as neither one of them designate the office to be filled. The so-called citizens' ticket shows the names of twelve candidates, while the maximum number of offices to be filled is only five. In addition to this, the citizens' ticket does not designate the length of the term for which each candidate was nominated. Without making any extensive examination of the law, we would say that these three defects would probably invalidate both ballots presented.

Mr. Mersfelder's letter, together with the two sample ballots are enclosed herewith.