

## Opinion No. 16-1953

March 22, 1916

**BY:** MILTON J. HELMICK, Assistant Attorney General

**TO:** Edward P. Davies, Esq., City Attorney, Santa Fe, New Mexico.

Requirements of a Municipal School Bond Election.

### OPINION

We have your favor of the 20th wherein you ask several questions concerning the mode of holding and conducting the school bond election which is to be held in Santa Fe on April 3rd. I do not know that I can answer your questions satisfactorily. The law is so meager, as you have doubtless discovered, on the subject of municipal school bond elections that it is difficult to say, with any certainty, how the election should be conducted. During the past few weeks we have advised interested parties regarding school bond elections held in Roswell, Alamogordo, Gallup and Albuquerque, and I will answer your questions about the same way that we answered the others.

The question has been informally raised of the right of municipal school districts to issue bonds at all under the present state of affairs. Sections 1584 et seq of the 1897 compilation, which provided for such issues, has been omitted from the Code of 1915. However municipal school districts have been issuing bonds constantly and, from what I can learn, the bond companies are accepting the bonds. The reference which you make to the second paragraph of Section 3 of Chapter 79 of the laws of 1915, is a valuable one. It has been argued also that Sections 4902 and 4903 of the 1915 compilation, are to be construed together and that the procedure provided in 4902 is applicable to municipal, as well as to rural, districts. It is also argued that Section 4903, which gives boards of education power to borrow money, carries with it the implied power to issue bonds. These arguments are not wholly satisfactory for the reason that there is much authority to the effect that the power to borrow money does not imply the power to issue bonds, and for the further reason that there is no apparent connection between 4902 and 4903, they being parts of different acts. However, as I said before, municipal school districts are constantly issuing bonds and I am also informed that it was decided at the last session of the legislature that no new legislation was needed to confer the authority to municipal districts to issue bonds.

As to the conduct of the election, I think the usual municipal regulations should apply. You will note that the election of members of the board of education, under the statute, is to be held in cities, towns and villages as for municipal officers, except that no registration is required. Municipal bond elections in the state are being conducted in line with this provision. No registration is required and the city officials, instead of the board of education, conduct the election and attend to the necessary matters incident to the

election and certify the returns. Such was the plan followed in Albuquerque at the recent election and such was the advice this office gave to the authorities at Gallup.

In view of the foregoing your question numbered 1 will be answered by saying that no registration is required. (Your question numbered 2 is answered by saying the city officials are to conduct the election and not the board of education.) I can see no necessity for the city council to pass a resolution authorizing the issue, although there would be no harm in so doing. Question numbered 3 should be answered by saying that Section 4902, being the only procedure we have owing to the omission from the compilation of the sections regarding municipal bond issues, the procedure outlined in 4902 should probably be followed.

I regret that this letter cannot satisfactorily answer your inquiries, but you are already aware of the unfortunate state of our statutes on the subjects you inquire about. I am by no means sure of the soundness of the opinion I have given you, but it at least has this merit, -- that it has been followed in general in all of the municipalities recently and hence there will doubtless be a uniformity in the procedure followed in all recent municipal bond issues.

(The above questions were settled, and the views above expressed were confirmed by the case of Board of Education of City of Roswell vs. Citizens National Bank, 23 N.M.; 167 Pac., 715.)