

## Opinion No. 18-2084

February 4, 1918

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

**TO:** Honorable J. H. Wagner, Superintendent of Public Instruction, Santa Fe, New Mexico.

Australian Ballot Not Used at School Elections.

### OPINION

We have your inquiry of today in which you ask whether the coming school district elections should be held as formerly, or whether the new election law, providing for the use of the Australian ballot will apply.

Your question is difficult to answer for the reason that the new election law, which is Chapter 89 of the Laws of 1917, is exceedingly indefinite in regard to school elections. There is no exception of school elections from the provisions of the chapter in so many words, but there is an exception relating to school elections, which I believe has the effect of excepting school elections from most of the provisions of the new law, especially from the requirements of an Australian ballot. Section 6 of the said act, provides that it shall be the duty of the County Clerk of each county to provide ballots for every election for public officers within the county, and to cause the name of every candidate to be certified to him on the ballot. Section 7 provides that elections for school directors are excepted from the provisions of the preceding Section numbered 6. This exception might ordinarily merely mean that school elections were to be excepted only in one particular, namely, as to the person who prepares the ballot, but I think that the exception has a wider application, because, beginning with Section 8, the chapter sets out the requirements for an Australian ballot, and Section 8 says:

"All ballots prepared under the provisions of this chapter shall conform to the following requirements."

In other words, it seems to me that when the sections are read together, the law means that the ballots prepared under the authority of the chapter, that is, by the County Clerk, shall be Australian ballots. Conversely, it would follow that ballots not prepared under the provisions of the law, that is, ballots not prepared by the County Clerk, would not have to conform to the requirements of an Australian ballot. It is my opinion that when ballots for school elections are excepted from the provisions of Section 6, they likewise become excepted from the provisions of Section 8, and most of the other sections of the law.

It is, therefore, my opinion that Australian ballots, such as are provided by the new law, are not applicable to school elections, and that the old law will prevail in that respect.