

Opinion No. 19-2221

March 24, 1919

BY: N. D. MEYER, Assistant Attorney General

TO: Mr. N. C. Frenger, Member of the Board of Trustees, Las Cruces, New Mexico.

Procedure for Municipal Election of Officers.

OPINION

Your letter of March 15th addressed to the Attorney General has been received by this office but owing to the late rush of business we have been unable to answer same are now. We are sorry for this delay. We answer the questions contained in your letter in the order in which they were set forth therein as follows:

1. Sec. 4872, Code of 1915, referring to the election of boards of education for incorporated towns and villages states:

"The election herein provided for shall be held, the returns thereof made and canvassed, and the certificates of election issued in accordance with the law applicable to elections of officers of the respective incorporated towns and villages wherein said boards of education are established, except that no registration shall be required."

Sec. 3591, Code of 1915, prescribes:

"The trustees or council of every municipal corporation shall appoint the judges and clerks of municipal elections and direct a place or places for holding such elections for municipal officers."

The last section quoted covers the election of officers of every municipal corporation which of course includes cities, towns or villages. Therefore it will be seen that the election for members of the board of education of any of these municipal corporations should be conducted by the municipal authorities the same as they conduct a municipal election.

Besides this, we have the decision of the Supreme Court of this State construing these laws in two different cases, to-wit: Board of Education vs. Citizens National Bank of Roswell and Barry vs. Board of Education, City of Clovis, both cases holding that these elections should be called, held and conducted by the city authorities. This I believe answers your first question.

2. This question presents a proposition that is somewhat hard to answer for the reason that in looking into the matter, I find that Chap. 89, Session Laws of 1917, which is the law known as the Australian Ballot Law, is exceedingly indefinite in regard to school

elections. Casual reading of Chap. 89, Laws of 1917, leads me to believe that all elections are to be held and governed by the provisions of the same. However, you will note that Sec. 7, this Chap. excepts justices of the peace, constables, municipal officers, acequia officers, irrigation or drainage district officers, members of boards of education and school directors, from the provision of Sec. 6 of the same Chapter, with a proviso that in all municipal elections, the municipal clerk shall perform the duties which devolve upon the county clerk by virtue of Sec. 6. Section 6, from the provisions of which the above mentioned officers are excepted, provides that it shall be the duty of the county clerk of each county to provide printed ballots, to cause the name of the candidates to be printed on the same and etc.

In regard to the officers excepted from the provisions of Sec. 6 with the exception of municipal officers there is no provision in the act whereby ballots for the election of the officers may be prepared by someone else other than the county clerk. Therefore, if it should be held that these officers were subject to the provisions of this act, it would be impossible to hold an election for no provision is made for the printing of the ballots. So it appears that these excepted officers, save municipal officers, are not in this respect subject to the Australian ballot law, but should be governed by the statutes in effect at the time of the enactment of the 1917 laws.

However, coming down to the very question that you are interested in, that is whether or not municipal elections are to be held under the Australian ballot system I am persuaded to believe that the case is different from that just above stated. I must come to the conclusion that the exception made by the Legislature in Sec. 7, excepts municipal elections from the provisions of Sec. 6, only as to who should prepare the ballots, that is to say, that in municipal elections the municipal clerk shall act instead of the county clerk and is not excepted from the operation of the Australian system. In view of the foregoing it is my opinion, that municipal elections are to be held under the Australian system, so it must follow that the election at which members of the board of education are elected, must be held under the same system.

3. The holding made in the last answer almost covers your third question. Chap. 89, Laws of 1917 (Australian Ballot Law) provides in different places to-wit: Sec. 1, Sections 6 and 7 as explained in the last answer; Sec. 9, 11, and 12, that the city or town clerk shall provide the ballots. You will note that the last five lines of Sec. 12 prescribe what provisions the city authorities should make relative to the holding of the elections. By reading this law you will also find that it is necessary that the names of the candidates be printed on the ballots. It is permissible, however, under Sec. 15 for an elector to write in the name of any person, for whom he desires to vote and whose name is not printed on the ballot.

4. I find no provision of law stating when the names of candidates must be certified to the town authorities. I think that the clerk should use his discretion in this matter and hold up the printing of the ballots for as long as possible, allowing only the time that is necessary to print the ballots before election day. The law provides that the clerk shall

deliver the ballots to the election judges any time before election day. Therefore, to deliver the same the day before election would be a proper compliance with the law.

I hope that all of the above will serve to assist you in preparing for the forthcoming election for members of the Board of Education of your city. I have gone into the matter quite thoroughly and believe that I have thrown as much light upon the subject as is possible.