

Opinion No. [29-74]

April 2, 1929

BY: J. A. MILLER, Assistant Attorney General

TO: Mr. J. F. Macon, President, Board of Education, Texico, New Mexico.

SCHOOLS -- Elections -- Sec. 120-903, Code 1929.

OPINION

This will acknowledge receipt of yours of the 28th ult. in which you ask an opinion as to the legality of an election held for the purpose of electing two members of the Board of Education of the Municipal District No. 2 in your county. You state that this election was advertised by posting notices in various places in the town of Texico on February 9, and that the election was held on Monday, Feb. 11, the result being that now doubt exists as to its legality.

Section 903 of the School Code, as applicable to municipal schools, provides that the board shall be composed of five members, and Sec. 904 is as follows:

"Section 904. On the second Tuesday of February in each odd numbered year, the qualified electors of the district and the territory attached thereto for school purposes shall elect at large two or three members of said board, as the case may be, to succeed those now holding office whose terms expire. Said elections shall be held, conducted, returned and canvassed as in cases of elections of officers in the respective incorporated cities, towns and villages, except that no registration shall be required."

From the section just quoted you will see that the election is to held on the second Tuesday of February in each odd numbered year, that it shall be held and conducted as in cases of the elections of officers in incorporated cities, towns and villages, except that no registration is required.

The statute governing the conduct of elections for officers in municipalities is found in Chapter 68 of the Laws of 1921, paragraph 1 of which is in part as follows:

"* * * the proclamation for all municipal elections shall be signed by the mayor and attested by the clerk of such municipal corporation, and such proclamation shall be published once a week for two successive weeks, the last insertion thereof to be at least one day before the date of said election, in the English language, or in both English and Spanish, if directed by the corporate authorities of such municipality, in one newspaper in said municipality to be selected by the City Council or Board of Trustees of such municipality; and Provided further, that in municipalities where there is no newspaper published that such proclamation of election shall be posted in at least five public places

within the corporate limits of said municipality for a period of at least eight days before the date of such election."

From the above, you will see that the election was not held on the day prescribed by statute, neither was the notice required by statute given, from which we are forced to the conclusion that the election was void.

It is suggested that you apply either to your county school superintendent or to the district attorney of your district as to further procedure in this matter.