

Opinion No. [30-50]

April 7, 1930

BY: J. A. MILLER, Assistant Attorney General

TO: Mr. E. K. Neumann, Neumann & Bujac, Carlsbad, New Mexico.

MUNICIPAL CORPORATIONS -- Bond elections to be held at regular election time. Art. IX, § 12, Const.

OPINION

This will acknowledge receipt of yours of the 5th inst. in which you request an opinion from this office as to the holding of a special election for the purpose of voting on the issuing of bonds for purpose of improving and beautifying public parks within a city in New Mexico. You call attention to section 12 of Article 9 of the New Mexico Constitution and to sub-section 67 of section 3564 of the Codification of 1915 and to sub-section 6 of section 3564, Codification of 1915, with reference, as well, to Smith v. City of Raton, 140 Pac., 110, 18 N.M. 613.

In Smith v. City of Raton the Supreme Court held that both sections 6 and 67 were existing laws of the territory of New Mexico at the time of its admission as a State except so far as the second paragraph of subsection 6 may be repugnant to the provisions of subsection 67. That is, they decided that the later enactment did not repeal the former but enlarged it so that a bond election might be held at either a regular or special election. The court deemed it unnecessary to decide at that time and for the purposes of that case whether or not subsection 67 is now in force in whole or in part or effected by the constitutional provision.

It appears to us, however, that the provision of sub-section 67, which provides for a special election, is repugnant to section 12 of Article 9 of the Constitution in that by the constitutional provision it is specifically declared that "no such debt shall be created unless the question of incurring the same shall at a regular election . ." be submitted to a vote of qualified electors who have paid a property tax, etc. We have there an express prohibition in the Constitution against the creating of indebtedness in any way other than that prescribed in the constitution itself and consequently we give it as our opinion that bonds based on an election held at a time other than a regular election would not be valid.