

Opinion No. 31-161

May 19, 1931

BY: Frank H. Patton, Asst. Attorney General

TO: Hon. Frank G. Spraker, Mayor, New Hobbs, New Mexico.

{*75} Your letter addressed to Mr. Neumann, Attorney General, dated May 15th, has been received and inasmuch as Mr. Neumann is out of town I will try to answer your questions.

You first desire information with reference to the appointment of an officer to be present at dances within the municipality and state that the Justice of the Peace has appointed an officer and that you, as Mayor and acting under an ordinance, also desire to make such appointment.

I can see no particular reason why more than one officer should not be present at these dances, if it is desired. However, under Section 81-302 and 81-304 of the 1929 Compilation, it is the duty of the Justice of the Peace to make such appointment upon the recommendation of the one who obtains or secures the license to hold the dance.

Of course, if the Justice of the Peace believes that the applicant himself is not a competent person to preserve order, and such person does not present anyone to act as an officer, we believe the Justice of the Peace would be empowered to make such appointment upon his own initiative. However, as above stated, if the dance is within the limits of the municipality, the trustees and Mayor certainly have the right to render police protection as is deemed necessary.

Your second question is with reference to the payment of fines and you wish to know if the clerk should be present at trials in police court, the fines to be paid to him, or if the judge has the power to collect these fines himself and pay the money into the City Treasury at any time he wishes.

Paragraph 79-216 of the 1929 Compilation provides that Justices of the Peace, when sitting as police judges, shall turn the fines for violation of offenses against ordinances of the municipality into the treasury. We believe it is within the power of the police judge to make these collections himself if he so desires, as he is the one who is accountable and required to render his report, under the law. He certainly does not have the power to hold this money in his possession for an unreasonable length of time, and we believe that his remittances to the municipal treasury should be made within a reasonable time. As to what is a reasonable time, of course, depends upon the circumstances, but, in our opinion, under ordinary conditions his remittances should be made to the municipal treasury at least within twenty-four hours after the receipt of the fine.

In your second letter of the same date you wish to know if you should call an election to fill vacancies on the board of trustees. This matter is covered by Section 90-2901 of the 1929 Compilation, and, under this section, vacancies on the board of trustees are to be filled by appointment by the Mayor by and with the advice and consent of the board of trustees, and the person so appointed {*76} is to hold office until the election and qualification of his successor at the next succeeding municipal election.

It is my opinion, under this provision, that the appointed members of the board of Trustees are entitled to hold their office until their successors have been elected at the next succeeding municipal election, and we are unable to see where the Mayor has any right or authority to call an election at this time for this purpose.

Trusting the above has fully answered your questions, I am