

Opinion No. 42-4092

May 25, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Guy Shepard State Democratic Chairman Santa Fe, New Mexico

{*200} In your letter of May 22, 1942 you, in substance, relate that at a village election two candidates for the office of trustee received an equal number of votes. In the light of these facts, you request our opinion as to the legal effect of such an election.

Our statutes are silent as to the manner in which village trustees could be declared elected in the event of a tie vote. In the absence of statutory authority, the canvassers cannot decide by lot or otherwise in case of a tie which candidates shall be declared elected.

In 20 C. J. 208, Section 268, we find the following statement:

"Where the vote results in a tie, and no provision is made by law for determining who shall be declared elected in such case, there is no election."

The above general statement of the law seems to amply cover the instant situation and I therefore, conclude that there was no election in this case. This being true, we now turn to the provisions of Article XX, Section 2, New Mexico Constitution, which reads as follows, to-wit:

"Every officer, unless removed, shall hold his office until his successor has duly qualified."

In view of the foregoing constitutional provision, I am of the opinion that the incumbent trustee will continue to serve "until his successor has duly qualified."

Trusting that the foregoing sufficiently answers your inquiry, I am

By HOWARD F. HOUK,

First Asst. Atty. General