

Opinion No. 46-4841

January 24, 1946

BY: C. C. McCULLOH, Attorney General

TO: Mr. C. R. Sebastian State Comptroller Santa Fe, New Mexico

{*177} We are in receipt of your letter of January 22, 1946, and the enclosed letter from Gordon Melody, Chairman of the Board of County Commissioners of San Miguel County.

Mr. Melody's letter asks two questions: first, whether a third paragraph of Chapter 109 of the Laws of 1945, which provides that no precinct or election district shall be abolished, or the boundaries or polling place therein changed less than 5 months before each election, applies to primary elections. That is to say, whether the word "election" in this clause includes primary elections, so that new voting divisions could not be created within 5 months of a primary election.

You will please find enclosed a copy of Opinion No. 4303, which holds that the word "election", as used in this clause, does not include primary elections. Since this opinion was written, the law was amended by Chapter 109. However, the only change made was to change the date of the meeting of the County Commissioners from May to March which, if anything, strengthens the opinion.

The second question asked is whether the Board of County Commissioners has the power, under this Chapter, to create a new voting division by taking parts of different precincts.

Section 1 of Chapter 109 of the Laws of 1945 provides, in part, as follows:

"* * * The County Commissioners shall, by order entered of record, divide every precinct and voting division * * *. Such election districts shall be designated respectively as election districts A, B, C, etc., of the precinct divided."

This section then provides for the consolidation of any precinct or voting division where the total vote cast in the last general election was less than 100.

In view of the fact that this section authorizes only the division of precincts into new election districts, or the consolidation of precincts, where less than 100 votes were cast, it appears that the County Commissioners do not have the power to create new precincts, or change the boundary of precincts, which would be necessary to permit the creation of a new election district out of two or more precincts.

It is, therefore, my opinion that the procedure set forth in Section 15-3515 of the N.M. 1941 Compilation would have to be followed to create new precincts, when it becomes

desirable to take a portion of one precinct and combine it with a portion of another precinct.

By ROBERT W. WARD,

Asst. Atty. General