

EX PARTE BUNCH, 1914-NMSC-097, 19 N.M. 638, 145 P. 257 (S. Ct. 1914)

**In the Matter of the Application of JOE BUNCH for a Writ of
Habeas Corpus**

No. 1757

SUPREME COURT OF NEW MEXICO

1914-NMSC-097, 19 N.M. 638, 145 P. 257

December 29, 1914

Habeas Corpus. Original in the Supreme Court.

SYLLABUS

SYLLABUS BY THE COURT

1. Under the provisions of Sec. 3, Chap. 78, S. L. 1913, an election for the purpose of determining whether the sale of intoxicating liquor shall be prohibited within a given district cannot be held within two months preceding any other election, and, such an election held within two months preceding the regular biennial election for justices of the peace and constables is absolutely null and void. P. 640

COUNSEL

O. P. Easterwood, Clayton, New Mexico, for Petitioner.

Local Option Statutes. Laws 1913, Ch. 78; C. L. 1897, Sec. 3224; Election void. S. L. 1913, Sh. 78, Sec. 3; In re Woolridge, 30 Mo. App. 212; Ex Parte Snyder, 64 Mo. 863; State ex. rel. White v. Ruark, 34 Mo. App. 325; Woolen and Thornton "The Law of Intoxicating Liquors", Vol. 1, Sec. 529, p. 882; Id. Sec. 531; Gossard v. Vaught, 10 Kans. 162, 26 Pac. 129; State of Nevada, ex. rel. Lewis Hess, et al. v. The County Commissioners of Washoe County, 6 Nev. 104, 34 Pac. 104; Town of Grove v. Haskell, 104 Pac. 58; City of Chanute v. Davis, 116 Pac. 367; Haskell v. Reigel, 108 Pac. 368; Winston v. State, 22 S. W. 138; Curry v. State, 13 S. W. 752; King v. State, 28 S. W. 201.

Construction of statute. O'Rielly v. Colbert and Coast Lines Hospital Association, 16 N.M. 647; U. S. v. Goldenberg, 168 U.S. 195; Baca v. Perez, 8 N.M. 197; Woolen & Thornton, Law of Intoxicating Liquors, Sec. 91; Ex parte McCardle, 12 Wall. (U.S.) 561; Doyle v. Continental Ins. Co. 94 U.S. 535; Ex parte Newman, 9 Cal. 502; Lyon v. Norris, 15 Ga. 480; McCullough v. State, 11 Ind. 424; Lilly v. City, etc., 49 N. E. 887; Coverdale v. Edwards, 58 N. E. 495; Gandy v. State, 82 Ala. 61; Sharkey v. State, 33 Miss. 353.

Frank W. Clancy, Attorney General, Santa Fe, New Mexico and George E. Remley, Attorneys for Respondent.

Construction of statute. McCrary v. Williams, 154 S. W. 418; 15 Cyc. 320 and cases cited.

Notice and proclamation of special elections. 15 Cyc. 322. Requirements of statute mandatory or directory. Hogins v. Bullock, 121 S. W. 164; Hinkle v. Coleman, 92 N. E. 61; State v. School District, 124 Pac. 484; People v. Voorhees, 91 N. Y. S. 595; State v. Russel, 51 N. W. 465; Fowler v. State, 3 S. W. 255; People v. Wood, 42 N. E. 536; In re Pine Hill, 33 N. Y. S. 181; State v. Bernier, 33 N. W. 368; Landcaster v. Hamon, 156 S. W. 142.

Can the election be attacked collaterally? 23 Cyc. 101; Wesley v. State, 122 S. W. 550; Woodward v. State, 30 S. E. 522; State v. Cooper, 8 S. E. 134; State v. Emery, 3 S. E. 810; Gubb v. State, 21 S. W. 190; State v. Villiage, 128 N. W. 295; People v. Foster, 58 N. Y. S. 574; State v. Gamma, 129 S. W. 734.

OPINION

{*639} OPINION OF THE COURT.

{1} The petitioner was arrested and is being held in custody by the Sheriff of Union County, for an alleged violation of Chapter 78, Laws 1913. The Act provides for the holding of elections in districts in the state, upon the question of the prohibition of the sale of {*640} intoxicating liquors therein. Section 3 of the Act prohibits the holding of any such election within two months preceding any other election. The election in this case was held on the 21st day of November, 1914, which was within sixty days next preceding the biennial election for justices of the peace and constables in all of the precincts of the state, as provided for in Section 3224, C. L. 1897. By reason of the prohibition of the Act of 1913, this election was absolutely null and void.

{2} It follows that the petitioner is not, and cannot be, charged with a violation of Chapter 78, Laws of 1913, supra.

{3} For the reasons stated, the petitioner will be discharged.