

Opinion No. 44-4477

March 10, 1944

BY: EDWARD P. CHASE, Attorney General

TO: Mr. E. T. Hensley, Jr., District Attorney, Portales, New Mexico

In your letter dated March 7, 1944, you state that a petition to determine whether the voters in De Baca County shall adopt local option was filed with the County Commissioners on March 6, 1944, and you request a construction of portions of Section 61-301 of the 1941 Compilation.

Your first question is whether the municipal election in Fort Sumner, to be held April 4, 1944, is a city election within the contemplation of this section.

Second, whether the primary election on June 6, 1944, is a general election within the contemplation of paragraph (e) of said section.

Third, how to harmonize conflicting portions of this section relative to the date of holding the local option election.

Section 61-301, subsection (a) of the 1941 Compilation provides in part as follows:

"The Board of County Commissioners, City Council or City Commissioners, as the case may be, shall call an election within sixty (60) days of the filing of such petition or petitions."

Subsection (e) provides as follows:

"No election held hereunder shall be held within thirty (30) days of any general or city election. If, within sixty (60) days from the filing of any petition as herein set forth, a general city election or state election shall be held, then the Board of County Commissioners or City Council or City Commissioners may call such election for a day thirty (30) days prior to said general election or at any time not less than sixty (60) days after said general or city election."

Due to the language used in Subsection (e), and the fact that the Legislature may not have contemplated that two elections would conflict with a local option election, it is very difficult to express an opinion with any certainty in view of the fact that minds may differ relative to the construction and interpretation of the language, and such difference of opinion might even appear were the matter properly presented to the Supreme Court for its decision.

Under the general municipal law, municipal elections are to be held in cities, towns and villages on April 4. Registration lists are required to be used in each municipality, and the elections are conducted in the same or a similar manner.

It was the evident intention of the Legislature to provide that local option elections should be held at a time different from the date fixed by law for general municipal elections, as well as general state elections. In view of that fact, the words "city election" in the law, undoubtedly includes municipal elections in cities, towns and villages.

The primary law and the local option law were both passed by the same Legislature. The local option law refers to a general election in one sentence and a **state election** in the next sentence. It apparently was the legislative intent that a local option election be held at a date not in conflict with any statewide election in which the electors of every precinct may exercise their elective franchise. This view is supported by the Supreme Court decision in the case entitled Territory v. Augustino Ricordati, 18 N.M. 10.

With this conclusion in mind, it is apparent that a local option election cannot be held 30 days prior to the municipal election in Fort Sumner on April 4, 1944.

The other alternative, under Subsection (e) above quoted is to hold the same at a date not less than 60 days after the municipal election. 60 days after April 4, 1944, conflicts with the date of the primary election, since it would be within 30 days of the primary election date.

Whether or not the local option election could legally be held not less than 30 days after the primary election is a debatable question. To be safe, it is suggested that the date be fixed at a time not less than 60 days after June 6, 1944.

The portion of Subsection (a) above quoted, requiring the election to be called within 60 days from the date of the filing of the petition is abrogated when there is a conflict with a municipal or state election.

Trusting that the foregoing satisfactorily answers your question, I am

By C. C. McCULLOH,

First Asst. Atty. General