

Opinion No. 54-5997

July 30, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Jose E. Armijo District Attorney Fourth Judicial District Las Vegas, New Mexico

{*455} This is in answer to your request concerning our interpretation of Section 14-4307, N.M.S.A., 1941, which deals with the procedure for the sale or lease of municipal property. Said section reads as follows:

"Petition of objection -- Number of signatures -- Stay of proceedings -- Election -- Call -- Question -- At any time within fifteen (15) days after the last publication of the notice of said proposal, a petition may be filed with the clerk of such municipality by qualified electors and taxpayers of said municipality, town or village objecting to the proposed lease or sale of the property, and if said petition shall contain the signatures of not less than 10% of the number of votes cast in the last preceding municipal election at which the officials of said municipality, town or village were elected it shall act as a stay of all proceedings in regard to said proposal, and the governing board of the municipality, town or village shall forthwith call a special election to be held not less than thirty (30) days and not more than sixty (60) days from the date of the filing of said petition, and the sole question to be voted upon at said election shall be whether or not the qualified electors of said municipality, town or village favor the proposal as contemplated by the governing board."

Your first question is addressed to the problem of whether or not the signers of a petition of objection to sale of municipal property not used strictly for governmental functions must be both qualified electors and taxpayers, as set forth in this statute.

It is quite clear throughout the statutes dealing with the power of the governing bodies of the municipalities in this State, to make improvements, create indebtedness, create paving districts etc., that this type of action is subject to a vote of qualified electors of the municipality who have paid property tax upon real estate situate therein. This qualification, it is believed, was created since the property holders of a city normally pay the costs of the operation of the city government, and, in some events, their property is subject to the payment of said obligations. Carrying this forward to this particular statute, it is noted that Section 14-4301, N.M.S.A., 1941, states that for property used for governmental functions, same cannot be sold unless the property owners so agree at an election. It would seem, therefore, that there is no logical reason why the rule should be different when the city is attempting to dispose of property not used strictly for governmental functions. To rule otherwise on this particular section would be, in effect, to strike the words "and taxpayers" from the statute.

{*456} It is, therefore, our opinion that a petition of objection to the sale of property not used strictly for governmental functions must be signed by persons who are qualified electors and who appear on the tax rolls within the city limits.

In answer to your next question concerning the 10% of the number of votes cast provision in the statute, seems to us to clearly mean that the 10% is determined on total votes cast in the last preceding municipal election at which officials of said municipality, town or village were elected, and that there is no prohibition as to whether or not said votes were cast by property owners in the community.

Your questions number 3 and 4 can both be answered together, and they are addressed to the problem of whether or not a person may withdraw his name from a petition once it has been filed.

There are two New Mexico cases to which I direct your attention in this regard. The first is Territory of New Mexico ex rel. J. W. Stockard v. The Mayor and City Council of Roswell, N.M., 16 N.M. 340, in which it is stated that petitioners may withdraw their names from a petition if the mayor and council have not acted upon the petition. In the instant case, it would appear that it would be necessary for the governing body of the City of Santa Rosa to first check the petition to determine whether or not it contains the proper number of qualified electors and taxpayers upon same, and then call an election. Therefore, it would seem that the formal action upon the petition would not take place until the determination of sufficiency of the petition is made, and that any one prior to that time, who wished to withdraw his name, regardless of his reasons, could do so. This proposition seems to be substantiated in the case of Crosthwait v. White, 55 N.M. 71, wherein it is stated:

"While there is a division of authority on the subject, this court is committed to the rule that while the signers of such a petition may withdraw their names before the body to which it is addressed has acted on it, they may not do so afterwards."

Your last question asks whether or not it would be mandatory for the governing body of the municipality to call an election even though they may decide to drop the entire transaction.

While it is true that the wording of the statute would appear to be mandatory in form, nevertheless, as a practical matter, until such time as the municipality has been obligated under contract to proceed with this transaction, it would appear that by proper motion they could withdraw from same. It would not seem that the Legislature would intend that the city should be put in a position of expending money to conduct an election when the governing body decided not to proceed. In other words, the city should not be required to bear the expense of a useless act.

I hope this opinion answers your questions on this subject.

By: J. A. Smith

Assist. Attorney General