

Opinion No. 58-96

May 14, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Honorable Manford W. Rainwater, State Representative, Quay County, Tucumcari, New Mexico

QUESTION

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Despite the recent negative vote in a municipal school bond election, may another election be held on the same, or substantially the same question less than two calendar years from the date of the last election?

CONCLUSION

No, but see analysis.

OPINION

ANALYSIS

Your question arises by virtue of § 73-8-21, N.M.S.A., 1953 Compilation. The last paragraph thereof provides:

"Two (2) separate questions may be submitted in the petition for election and in the election, in which case the vote thereon shall be separately counted, canvassed and certified, but in the event any question so submitted is defeated no further election shall be held on the same question for a period of two (2) calendar years from the date of the election."

Under the same, it is our opinion the quoted provision prohibits the election on the same or substantially the same question until expiration of the time specified. We do not believe the statute, which is clear and unambiguous, can be avoided merely by rewording the question if substantially the same issue would be placed before the electorate. See Opinions of the Attorney General 1929-1930, page 24.

We appreciate your argument about the great need for additional school space, and fully agree therewith. Because of such, we are expanding upon this analysis in order to be of some possible help to you.

In the case of *Mann v. Board of Education of The City of Roswell*, 43 N.M. 78, 85 P. 2d 595, a taxpayer sought to enjoin the issuance and sale of bonds because the election was held within the second year following a previous bond election. Despite this, the Court held that because of the provisions of Laws 1934 (Spec. Sess.), Chapter 6, the bonds could be sold to the federal government, and financing could be thus obtained. Such laws are still in full force and effect, and we respectfully call your attention to §§ 6-8-1, et seq., N.M.S.A., 1953 Compilation, where they are compiled.

Of course, as you know, the limitations generally applicable to challenging school bond proceedings are quite short. See *Board of Education, etc. v. Patton*, 43 N.M. 107, 86 P. 2d 277; *Taos County Board of Education v. Sedillo*, 44 N.M. 300, 101 P. 2d 1027, and cases and statutes therein cited.