

Opinion No. 60-40

March 9, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: John A. Anderson City Attorney City of Lordsburg P. O. Box "S" Lordsburg, New Mexico

QUESTION

QUESTIONS

1. Under Sec. 14-15-2, N.M.S.A., 1953 Comp., relating to the elections of city officers, who are certified as the candidates elected to the city board of aldermen in a city with four wards, the four candidates receiving the most votes city-wide or the candidate from each ward receiving the most votes city-wide?
2. May candidates for the several city offices file for election on a "ticket" such as a "citizens group," and may ballots be authorized in which the voter has the choice of voting a straight "ticket" or for candidates from two or more "tickets" at his option?

CONCLUSIONS

1. The candidate from each ward receiving the most votes city-wide should be certified as elected.
2. Yes, but see analysis.

OPINION

{*393} ANALYSIS

Section 14-15-2 requires as pertinent here that the qualified electors of cities are, on the first Tuesday of April on each even numbered year, to elect one alderman from each ward in the city.

We have previously held in {*394} Opinion No. 3359 at page 125 of the Attorney General's Report for 1939-1940 that under this section, then compiled as Section 90-608, 1929 Comp. Stat., a candidate for the office of alderman from one ward could reside in another ward of the city. Further, in Opinion No. 6406 dated March 13, 1956, we held that the candidate receiving the highest number of votes on a city-wide basis and not on a ward to ward basis is elected alderman from such ward. We base this conclusion upon the case with **Wright v. Closson**, 29 N.M. 546, 224 P. 483 in which the Court said:

"We, therefore, conclude that members of a city council should be elected by the qualified electors throughout the municipality at large, and not from their respective wards only, and the lower court so held."

Thus, it is clear that the candidate who is elected is he who has received the highest number of votes computed on a city-wide basis. This does not necessarily mean that in a city with four wards, the four candidates receiving the four highest number of votes will be elected because Sec. 14-15-2 requires that an alderman will be elected **from each ward**. This provision cannot be read out of the statute. Therefore, we conclude that the candidate receiving the most votes in each ward election is the candidate who is duly elected even though the number of votes he receives is to be computed on a city-wide basis.

We turn now to your second question, i.e., may candidates for the city offices file for election on a "ticket" basis and if so, may the ballots be set up so that voters may, in the alternative, vote a straight ticket or a split ticket.

There are no statutes that we are aware of which either specifically authorize or prohibit a ticket in municipal elections, nor has the Supreme Court of our state ever specifically ruled on this question. However, in the case of **Hampton v. Priddy**, 50 N.M. 23, 168 P. 2d 100, our Court ruled that statutes dealing with political party organizations and nominations by political parties which have not received more than 15% of the total number of votes cast for candidates for governor at the last preceding election are inapplicable to a non-partisan ticket officer to electors in a municipal election. In doing so, the Court recognized the existence of such non-partisan tickets and in fact by dictum approved of them. With this case in mind and with no statutory authority expressly prohibiting such a ticket, we hold that candidates for city offices may file for election on a non-partisan ticket.

It is also our opinion that ballots providing the voter the choice of voting a straight ticket or a split ticket in municipal elections may be used, provided the candidates for any ticket be placed on the ballot, file the tickets' name and emblem, if any, with the Secretary of State prior to the election. The case of **Telles v. Carter**, 57 N.M. 704, 262 P. 2d 985 held that the general election provisions of the election code with respect to the manner of marking ballots was applicable to elections of municipal officers. Further, Sec. 14-14-3 requires that all elections for municipal officers, shall in all respects, be held and conducted in a manner prescribed by law in cases of county elections and Sec. 14-14-3 and 14-14-4, supra, apply to county elections. See also our Opinion No. 59-2 in which we held that any party or non-partisan group is entitled to have its candidates in the municipal school election listed under the party or group emblem, but the emblem and party or group name must be registered with the Secretary of State and must not be confusingly similar to those of any other party. Copy of such opinion is enclosed.

By: Philip R. Ashby

Assistant Attorney General