

## Opinion No. 62-43

March 13, 1962

**BY:** OPINION OF EARL E. HARTLEY, Attorney General William E. Snead, Assistant Attorney General

**TO:** Mrs. Betty Fiorina, Secretary of State, State Capitol, Santa Fe, New Mexico

### QUESTION

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Whether the Court action for changing precincts outlined in Section 3-2-1, N.M.S.A., 1953 Comp. (PS), applies to change in precincts prior to the primary election.

#### CONCLUSION

Yes.

### OPINION

#### ANALYSIS

In your request for an opinion, you point out that Attorney General's Opinion No. 60-67, overruled Opinions No. 4303 and 4841 insofar as those opinions held that the phrase, "Each board of County Commissioners may meet **at any other time not less than four (4) months before each election . . .** (Emphasis supplied)" to change or abolish precincts, referred to general elections only. Opinion No. 60-67 pointed out that Sec. 3-2-1, N.M.S.A., 1953 Comp., had been amended subsequent to those earlier opinions and held that they were no longer controlling. Opinion No. 60-67 stated:

"The answer is clear. Precinct boundaries cannot be changed less than four months before **any election unless Court action is initiated as prescribed** in the above cited statute. (Emphasis supplied)."

Your present question is whether the provisions for Court procedure also applies to primary elections. The relevant provisions of Sec. 3-2-1 provide that:

"Any ten (10) qualified electors of any election precinct or election district dissatisfied with the boundaries fixed for or location of the polling place designated by the board of county commissioners may, **at any time not less than forty-five (45) days before any general election**, present their verified petition to the district court. . . ." (Emphasis supplied)

This statute is specific in referring to a **general** election. However, it is also specific in providing that the petition may be filed **at any time** not less than forty-five (45) days prior to the general election. You will note that, in speaking of the time within which the Commissioners may themselves order an abolishment or boundary change of a precinct or election district, the statute requires that action be taken not less than four (4) months prior to **any election**. When speaking of the time within which a petition must be filed by dissatisfied electors, the statute uses the term **general election**. There obviously was an intention on the part of the Legislature to make a distinction. The term "general election" has an obvious meaning, Therefore, it is our opinion that the petition may be filed at any time not less than forty-five (45) days prior to the **general** election regardless of the time relation between the date the petition is filed and the date of the primary. It should be pointed out that the present opinion does not decide on what date the Court should make the change effective if it finds that the petition is well founded.