

Opinion No. 64-75

June 3, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Donald J Wilson, Assistant Attorney General

TO: Mr. Jay Morgan, City Attorney, City of Portales, P. O. Box 630, Portales, New Mexico

QUESTION

QUESTIONS

1. Does a petition for an election for a local option pursuant to Section 46-3-1, N.M.S.A., 1953 Compilation, require 25 per cent of the votes cast by residents of the city?
2. If so, how is the number of votes cast in the city for Governor to be determined when the voting districts accommodate both residents of the city and also the surrounding rural area?

CONCLUSION

1. Yes.
2. See Analysis.

OPINION

ANALYSIS

The facts indicate that the City of Portales contains over five thousand (5,000) population. It is also indicated that there are nine voting districts in which the residents of the City and the surrounding rural area may vote. Thus, it is apparent that the total vote cast in the nine voting districts will include votes cast by persons living outside the city.

In regard to petitions for local option elections, Section 46-3-1, N.M.S.A., 1953 Compilation provides in part:

(a) ". . . the legal voters of any proposed local option district may petition in writing, the board of county commissioners, or the city council, or the city commissioners, as the case may be, by filing one (1) or more petitions in the office of the county clerk or the city clerk to hold an election for the purpose of determining whether such county or city shall adopt the local option provisions of this law. If the aggregate of all the names signed to all such petitions shall equal or exceed twenty five (25) per cent of the number

of legal votes cast in said county or city for governor in the last preceding general election, then, and in that event, 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. . . ."

Thus, it is apparent from the foregoing statute that a city of over five thousand (5,000) population may adopt the local option provision in regard to the sale and consumption of alcoholic beverages while the county in which such city is located may reject such provision or refuse to act thereon. If the City desires an election for the purpose of adopting the local option provision, it is clear that the petition or petitions must be signed by a number of persons equal to or exceeding twenty-five (25) per cent of the number of legal votes cast by residents of the city for governor in the last general election.

The problem now arises as to the method of determining the number of votes cast by residents of the city for government when the voting districts include both city residents and residents of the surrounding rural area. This problem can be resolved in two ways: First, the records indicate that the nine polling places in the City of Portales registered 3,056 votes for governor in the last general election. Therefore, if the petitions contained an aggregate of 764 signatures, the required 25 per cent will be more than met since the 3,056 total includes voters living outside the city. Second, if the 764 signatures cannot be obtained, it will be necessary to check the registration books and determine whether each individual voter voting in the last general election lived within or without the city in order to determine the exact number of votes cast by residents of the city in the last general election.