

Opinion No. 12-870 1/2

February 13, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Hon. Hiram M. Dow, City Attorney, Roswell, N. M.

CITY BOARD OF EDUCATION.

Time for holding election of Board of Education in cities and right of women to vote at such election.

OPINION

{*13} Your letter of the 10th inst. has reached me here today, having been forwarded from Santa Fe. You say that the City of Roswell has issued its call for the regular biennial election to be held on the first Tuesday in April, as provided by law, and that the call includes the election of members of the Board of Education as provided by Section 1567 of the Compiled Laws of 1897, and amended by Chapter 9 of the Laws of 1903, and that you would like my opinion as to whether the election of such members of the Board of Education on the same day as the general city election, would be invalidated by the provision in Section 1 of Article VII of the Constitution, which declares that "all school elections shall be held at different times from other elections."

Section 1567 of the Compiled Laws, as originally adopted, provided for the election annually, at the annual city election, of one member from each ward, to hold his office for two years and until his successor should be elected and qualified. The amendment referred to of 1903 so changed this system that, when taken in connection with the further amendment in Chapter 93 of the laws of the same year, it required on the first Tuesday of April, 1906, and each two years thereafter, the election of one member of the Board of Education from each ward, to hold office for the period of four years, omitting the provision as to his holding office until his successor should be elected and qualified. This omission, however, is now unimportant, in view of the general provision in Section 2 of Article XX of {*14} the Constitution, that "Every officer unless removed shall hold office until his successor has duly qualified."

There can be no doubt of the correctness of the statement that no election of public officers can be held unless distinctly authorized by law. The statutes of 1903 clearly authorize the election of one-half of the Board of Education in a city at the same time as the general biennial city election, and these provisions, by virtue of Section 4 of Article XXII of the Constitution, remain in force as laws of the State, unless inconsistent with the Constitution. I believe there can be no doubt that the election of members of a City Board of Education must be considered as a school election within the meaning of Article VII of the Constitution, and that therefore the holding of such an election at the same time as the general city election, would be inconsistent with this constitutional

prohibition. Until the legislature acts, however, and fixes a time for holding such election separately from any other election, there is no authority of law under which the election can be had, but the present members of the board will continue in office until their successors are qualified. Presumably the legislature will promptly discharge the duty of providing as to when such elections shall be held.

You further ask as to whether women should be registered as voters, and will have the right to vote at a special election called for the purpose of submitting to the voters the question of the issuance of school bonds, and also at the election of members of the Board of Education. If there could be a valid and regular election of members of the board, it is plain that the Constitution gives women the right to vote at such elections, just as much as it gives male citizens possessing the specified qualifications the right to vote at all elections. As to the school bond election, the question is not so plain and clear. The Constitution declares that women shall be qualified electors at school elections, and there may be some room to argue that the intention was to specify only elections of school directors or school officers, but I believe that this would be an unwarrantably narrow and unreasonable construction, and that by "school elections" the Constitution intends to cover all local elections as to the management, control and administration of public schools. Certainly nothing can be more important to such administration of schools than the issuance of bonds by which funds may be provided for the benefit of the schools. I am of opinion that women have the right to vote upon the question of such a bond issue.