

Opinion No. 14-1156

February 4, 1914

BY: IRA L. GRIMSHAW, Assistant Attorney General

TO: Mr. Byron O. Beal, Artesian Well Inspector, Roswell, New Mexico.

ARTESIAN WELL BOARD.

As to election and meetings of artesian well board.

OPINION

{*8} Your letter of January 8, addressed to the Attorney General, and which was transmitted to Mr. K. K. Scott, District Attorney of your district, for his attention has been returned to us by Mr. Scott.

The District Attorney, by law, is made your legal adviser. However, as Mr. Scott is unable to give his attention to the matter because of press of court work, we will answer the questions propounded by you.

A. Are the proceedings of the annual meeting of artesian well owners void because the notice thereof was three days short of the statutory thirty days?

The law provides that:

"At an annual convention of the artesian well owners of each county, to be held on the first Monday of February of each year, there shall be elected one member of said Board."

Chapter 81, Laws of 1912, page 164.

The law also makes it the duty of the County Well Board to give thirty days' notice of the holding of the annual election of a well commissioner.

Because the statute provides that the annual meeting shall be held at a definite time prescribed by the act, it is our opinion that the {*9} meeting would be legal and the proceedings valid, notwithstanding the notice thereof was three days short of the prescribed time.

B. Must two separate meetings be held for the purpose of electing a well commissioner?

Under the Laws of 1909, the board of county commissioners of each county at their first regular meeting after the passage of that act issued a call for a convention of the owners of artesian wells. That convention, when assembled, elected three

commissioners who composed the County Artesian Well Board. They served one, two and three years. The conventions thereafter were held annually on the first Monday in February, at which time one member was elected to the County Artesian Well Board to fill the vacancy caused by the expiration of the term of office of one of the commissioners.

Under the law of 1912, the time of the holding of the conventions was not changed. At each convention one member of the Board was elected to fill the vacancy in the board as in the case under the 1909 law.

The convention of February, 1913, however, was charged with dividing the county into three artesian well districts. The effect of that new provision is to give equal representation on the County Well Board to each district so created. In the convention of February, 1913, it was the duty of the convention to elect a representative of the newly created district numbered one to fill the vacancy caused by the expiration of office of one of the old commissioners. There is but one meeting to be held for the selection and election of a well commissioner.

C. Is the Artesian Well Board faithfully discharging its duties when seven months elapse between its meetings?

The act of 1912 provides that the board shall hold regular quarterly meetings and give proper notice thereof. Those meetings are for the purpose of generally transacting such business as may properly need their attention and that may properly come before it. The provision, I take it, is mandatory, and they should at least go through the formality of holding the meeting.

D. Is a person, who was selected a member of said Artesian Well Board at a time other than at the convention held in February, legally entitled to act as a commissioner on said board?

The law provides that the commissioners composing the board shall be elected at the convention in February.

Under the provisions of the 1909 law a vacancy in the board caused by death, resignation or removal from office of a member was filled by the remaining two members; in the event of two vacancies, the county commissioners filled the vacancies by appointment.

The laws of 1909 on the subject were repealed by the 1912 law. The 1912 law makes no provision for such contingencies, and is absolutely silent on the proposition.

However, after some study and search of authority, I am of the opinion that a vacancy in the board reduces the membership of the board to two persons and that it must remain so constituted until the next election, at least. In the absence of some color of authority, either in the County Well Board or the board of county commissioners, the office

remains vacant until it can be filled by election at the {**10*} annual convention. I realize that the law makes no provision for the election of two commissioners at such annual meetings, but that action by the convention would, no doubt, be sustained because of the law's abhorrence of the existence of a vacancy in a public office.

E. Do dishonored warrants drawn on county treasurer on Artesian Well funds draw interest?

I know of no provision of law in New Mexico which permits interest in any form on such warrants.