

## Opinion No. 14-1224

May 7, 1914

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. Rupert F. Asplund, Chief Clerk, Department of Education, Santa Fe, New Mexico.

### **SCHOOLS.**

As to the holding of a county high school election within two months preceding any other election.

### **OPINION**

{\*84} I have before me your letter of the 5th inst. inclosing another from Saturnino Baca, County Superintendent of Schools of Valencia County, from which it appears that the county commissioners have refused to act, or delayed action, upon a petition for a high school election because they have already ordered an election for a portion of the county, including seven school districts, under Chapter 78 of the Laws of 1913. That chapter is the one providing for a local option election in a district of a county upon a petition signed by twenty-five per centum of the qualified electors resident within the proposed district, and it must be, as you suggest, that the delay in acting is on account of the provision of Section 3, of said Chapter 78, which provides that such local option election cannot be held "within two months preceding any other election," and the election already ordered is for the 25th of the present month. The act under which the high school election is to be called is Chapter 57 of the Laws of 1912, and section 2 of that act provides that it is the duty of the board of county commissioners, upon presentation of a proper petition, to call the election "not less than thirty days following the meeting of said board at which such petition is received." There is no limit as to how long, after the petition is received, that the election must be held, and if the holding of the local option election on May 25 would make it impossible to hold any other election until two months thereafter, still the county commissioners might call the election now for the latter part of July, and perhaps that would be a safe course for them to take.

My opinion is, however, that it could not have been the intention of the legislature to prohibit the holding of a local option election {\*85} less than two months preceding some other special election, like that for a county high school, or another local option election. There might come to the board of county commissioners petitions for local option elections from four or five different districts in a county, and after an election had been ordered on the first one presented, then if my view is not correct, it would be impossible to hold an election in another district until two months after the first one, and in this way it might be a whole year before all the elections could be held. I cannot believe that the legislature intended anything of this kind, but that the object was to prevent the

excitement and irritation, which so often arises in a local option election, from interfering in any way with general or regular elections.

However, I do not see that it is necessary at this time to pass on that point because, as already suggested, the county commissioners can fix the election at a day which will be more than two months after the local option election.

I return Mr. Baca's letter herewith.