

Opinion No. 16-1773

April 5, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Hon. H. B. Hamilton, Alamogordo, N. M.

As to description of district to be contained in a petition for a local option election.

OPINION

{*344} I write this letter in compliance with your request over the telephone this afternoon that I should, by letter, confirm what I gave you as my opinion concerning local option petitions.

As I understood you over the telephone, there are two petitions which have been presented, or are about to be presented, to the county commissioners of Otero County for a local option election under the provisions of Chapter 78 of the Laws of 1913, which reappears in the Codification beginning with Section 2927, and that {*345} one of these petitions describes as the proposed district in which the election is to be held, the precinct of Tularosa, while the other attempts to describe the whole of the county outside of the incorporated town of Alamogordo. I am of opinion, based upon the language of the second paragraph of Section 2927 of the Codification, that the legislature did not intend to provide for a county-wide election on the subject of prohibition, because that paragraph says that any district designated by the county commissioners "shall include such part of the area of any county as may be described in the petition provided for and filed in accordance with this article." The implication here is that the district shall be only a part of the area of any county, but there is nothing to indicate how large a part it shall be, and the district might be made to include all but a very small portion of the county. In the present case, however, as Alamogordo is excluded and is a part of the area of the county, a description of a district comprising all of the county except that which is within the limits of the town, would seem to be a literal compliance with the language of the statute.

There are two things which appear to be essential not only to the validity of the election, but to the taking of any action upon the petition by the county commissioners as required by Section 2928 of the Codification. They are that the petition must be signed by at least twenty-five per centum of the qualified electors resident within the proposed district, and the petition must describe accurately the boundaries of the proposed district. I take it that the county commissioners must, before ordering an election, be convinced that the requisite number of qualified electors have signed the petition, and that the petition does accurately describe the boundaries of the proposed district.

Also, I call your attention to the last sentence of the first paragraph of Section 2928, which provides that if two or more such petitions are filed wherein the area described is conflicting, the commissioners must determine the district or districts in which the question shall be submitted.