

Opinion No. 16-1841

June 30, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Mr. J. Floersheim, Springer, New Mexico.

Procedure necessary in the incorporation of a village.

OPINION

{*401} I have just received your letter of yesterday in which you ask my opinion as to details of incorporation of a village under the provisions of Section 3766 of the Codification of the statutes. You say that there is some difference of opinion as to whether all necessary proceedings by the county commissioners can be had at two regular meetings, or necessarily at three regular meetings.

That section of the statutes requires a petition, which is provided for in Section 3764, to be presented to the board of county commissioners at a regular meeting, and the statute says that the petition "shall be filed by the clerk to be finally acted upon at the next regular meeting of the board." Final action cannot be had until after the survey and census are made, as provided for in the next sentence of the statute. The county commissioners, in your case, when the petition was presented for the incorporation of Roy, at the regular April meeting, at that time, if satisfied with {*402} the genuineness of the signatures appearing on the petition, and upon the deposit of money, or a guarantee to cover the expenses of the survey and census, might have appointed a person to take the census, and might have directed the county surveyor to make the survey in the manner required by law. Everything would then have been ready for the final action by the board at its meeting on the first Monday in July. There is no requirement in the statute as to when the commissioners shall order the survey and census, and I believe that they might have done so at any meeting after the April meeting, and might have held a special meeting for that purpose.

The statute further requires that the report of the survey and census shall be filed on or before the first day of the next regular meeting of the county commissioners, but as I understand your letter, the survey and census have not yet been ordered, and it is now obviously impossible to have the order and the filing of the survey and census on or before that Monday. I am inclined to think, however, that this requirement as to the time when the report shall be filed, is directory only, and not mandatory, and that if the county commissioners, when they meet on Monday, will make the necessary orders for the census and survey, and then adjourn until some fixed day later in the month thus keeping the regular July meeting alive, and giving sufficient time to get the report of the census and survey, they might, at that adjourned day, take final action on the petition and report, and declare the people of the territory embraced in the survey to be an incorporated village, and order an election of village officers. This would be in

accordance with the requirement in the first sentence of the section, which is that the petition must be finally acted upon at the next regular meeting of the board after its presentation. That requirement is just as important as the other one that the report shall be filed on or before the first day of the next regular meeting of the county commissioners.