

Opinion No. 19-2211

March 10, 1919

BY: O. O. ASKREN, Attorney General

TO: Hon. J. H. Wagner, Superintendent of Public Instruction, Santa Fe, New Mexico.

Municipal Officers Should Call and Provide for Election for Board of Education of City.

OPINION

Answering your request for an opinion of this office as to who are the proper authorities to call the election in districts of the same class to which the City of Deming belongs, we beg to state:

In the case of Board of Education vs. Citizens National Bank, reported in 167 Pac. 715, the court, construing the statutes relative to voting bonds by municipal school districts held that such an election should be called, held and conducted in the same manner as school officials are elected, insofar as such procedure is applicable, and said that the election should be called by the city council, notice therefor given by the mayor, and the returns made to and canvassed by the city clerk and mayor, all as provided in the case of election of the municipal school district officers.

In the case of Barry, et al. vs. Board of Education of the City of Clovis, some of the citizens prayed for an injunction against the Board of Education enjoining them from selling certain school bonds, alleging that said bonds were illegal because the election at which said bonds were voted for was not called, held, etc., by the proper authorities. In this case said election was called, held, etc. by the Board of Education of the City of Clovis. It was held by the supreme court in this case that the election had not been called by the proper authorities the defendants practically admitting that the same should have been called by the city authorities.

Section 4869 of the Codification of 1915 prescribes that the election for members of the board of education shall be held, canvassed and certificates of election issued in accordance with the laws applicable to election of officers of incorporated cities, except that no registration shall be required.

Section 3591 of the Codification prescribes that the city council is to direct and hold elections for municipal officers.

Therefore, it is the opinion of this office that in the particular instance cited by you, the election should be called, held, etc. by the city authorities, as fully set forth in the last section cited.

N. D. MEYER,

Assistant Attorney General.