

Opinion No. 22-3379

April 14, 1922

BY: HARRY S. BOWMAN, Attorney General

TO: Hon. John V. Conway, State Superintendent of Public Instruction, Santa Fe, New Mexico.

Procedure in Case of Tie Vote for School Directors.

OPINION

{*143} Referring to the attached letter from Mr. Canuto Trujillo under date of April 9th, requesting an opinion regarding the procedure to be followed in a case where there is a tie vote for the office of school director, I wish to advise you as follows:

The only provision in our statutes which governs the procedure to be followed in a case where there is a tie vote is Section 2045, Code 1915, and this act refers only to tie votes in offices of probate judge, sheriff, justice of the peace or constable, and, therefore, cannot apply in a case such as that mentioned in your correspondent's letter. Section 20, Article V of the Constitution provides a method of procedure in the matter of a tie vote in an election for state officers. This provision also would be inapplicable to the case mentioned in the attached letter.

Where there is a tie vote in an election there is no election and unless the statute provides for a method of determining who is elected or authorizes another election, the incumbent holds over until the election in the regular order as provided by law. This would be the procedure in the case mentioned in Mr. Trujillo's letter.