

## Opinion No. [29-96]

July 30, 1929

**BY:** J. A. MILLER, Assistant Attorney General

**TO:** Esther K. Romero, County Clerk, Reserve, New Mexico.

SCHOOLS -- Procedure in school bond elections.

### OPINION

I have received from your office the transcript of proceedings in school bond election held in District No. 32, Catron County, on the 26th day of June, 1929, and have examined the same.

While it is evident that an effort has been made to follow statutory procedure the transcript is not complete. Some of the omissions no doubt can be supplied.

If you will note the requirements of the statute relative to transcripts in a bond election as the same appears as section 714 of the New Mexico School Code, based on chapter 148, Laws of 1923, as amended, you will there find reference to the sections governing the several steps.

In this transcript the petition based on section 702 does not show upon its face when it was filed so that we may be able to determine whether it was between January 15th and May 31st or not. It is addressed "To the Catron County Commissioners," and in the body of the petition the wording is "Board of Commissioners of Catron County," neither of which is exactly correct, though I think probably sufficiently so to get by.

The petition does not show, nor is there any certificate attached from which we may know that the petition contained **genuine signatures** of **qualified electors** of the district, or whether such petitioners had paid a **property tax** during the preceding year, or whether the number of those qualified and paying a property tax was equal to 10% of the combined vote cast in the district at the last preceding general election for governor. If the facts warrant, all of these things might yet be shown.

You will note further that it is provided in section 702 that two separate questions may be submitted in the petition but that the vote thereon shall be separately counted, canvassed and certified. This petition calls for the submitting of two questions, first, the purchase of school grounds, and second, the erecting and equipping of a building, it having been held that building and equipment constitute one. Later we discover that the notice of election simply submits the question as to whether or not the district may become indebted and issue bonds "for the purpose of erecting a school building." This one purpose is all that is included on the ballot. This, I fear, is after variance between the petition and the proceedings which followed.

Section 705 requires that the notice of election be posted as well as published and there is no showing in the transcript as to whether or not that was done. If the facts warrant, that omission might be supplied.

The publication required in section 710, that is the certificate of finding by the board after canvass of the vote, is to be published in Spanish as well as English, provided there is a paper published in Spanish in the county. If there is no paper published in Spanish in the county that omission might yet be supplied by proper affidavit.

By section 1, chapter 131, Laws of 1925, which appears on page 47 or in the appendix to the School Code, it is required that before initiating any proceedings for a bond issue, those contemplating the same shall forward to the State Tax Commission notice of such proposal in writing. Section 2 of the act specifies the duties of the State Tax Commission. This is thought to be directly and probably could be supplied now, its object being to advise the Tax Commission and to furnish information as to the assessed valuation of the district and previous bond issues, if any. This same section 2 provides that a complete transcript be furnished in triplicate.

Turning back to section 714, you will note that the transcript submitted to the Attorney General, and which we now understand to be required in triplicate, shall, in addition to other things there enumerated, contain a certificate of the county clerk mentioned in section 713, that is a certificate of no litigation. Your transcript does not contain such a certificate.

It is provided in section 715 of the School Code that no bonds shall be issued nor sold after July 1st in any calendar year.

Because of two provisions which it appears could not possibly be cured now, that is the requirement relative to the submitting to the voters the two questions embodied in the petition, and the limitation of the statute as to the issuing of bonds after July 1st, I am unable to approve the proceedings, even though other matters herein referred to might be amended and made sufficient.