

Opinion No. [30-101]

February 4, 1930

BY: J. A. MILLER, Assistant Attorney General

TO: Mr. R. R. Posey, President, Board of Education, Las Cruces, New Mexico.

SCHOOLS -- On failure to hold election board holds over. § 120-904, Code 1929; Art. XX, § 2, Const.

OPINION

Yours of the 1st instant in re Municipal School District No. 2, Las Cruces, New Mexico, and in which you explain that your district failed to hold the election in February, 1929, as a result of which members whose term of office would have expired at the time are holding over, is before me. You ask whether they are right on continuing on the board and whether the actions of the board are legal.

Your attention is directed to section 2 of chapter 138 of the Laws of 1927, which amends the former law and is now referred to in the Compilation of 1929 as 120-904. This section reads as follows:

"Election. On the second Tuesday of February in each odd numbered year, the qualified electors of the district and the territory attached thereto for school purposes shall elect at large two or three members of said board, as the case may be to succeed those now holding office whose terms expire. Said elections shall be held, conducted, returned and canvassed as in cases of election of officers in the respective incorporated cities, towns and villages, except that no registration shall be required."

Your attention is further directed to section 2 of Article XX of the Constitution of the State of New Mexico, which provides for the holding over of all elected or appointed officers until their successors have been elected and qualified.

I am of the opinion that the members of your board so holding over are doing so under authority of the Constitution and Statute and will continue to be the board until the election in 1931. The acts of the board are legal as though these had been regularly elected at the specified time.