

Opinion No. [30-98]

February 4, 1930

BY: J. A. MILLER, Assistant Attorney General

TO: Mr. W. S. Moore, Eddy County Abstract Company, Carlsbad, New Mexico.

SCHOOLS -- Elections for boards to be held only in odd numbered years.

§ 120-904, Code 1929.

OPINION

I have before me yours of the 2nd instant in which you state that the City Council of Carlsbad, New Mexico, failed to call an election for school directors to be held in the Spring of 1929 and that the old board is holding over. You ask to be advised whether or not an election can be held this Spring.

Your question seems to be answered in section 2 of chapter 138, Laws of 1927, which amends paragraph 904, chapter 148 of the Laws of 1923. This section is now designated 120-904 of the 1929 Compilation and is 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."

I am of the opinion that no election is authorized other than that provided for in the above section to be held on the second Tuesday of February in each odd numbered year.

Your attention is also directed to section 2 of Article XX of the Constitution of the State of New Mexico, which provides that every officer, unless removed, shall hold his office until his successor has duly qualified.

This section should be interpreted in the light of the preceding section which provides that every person elected or appointed to an office shall, before entering upon his duties, take and subscribe to an oath. Our Supreme Court has held that the incumbent of an office is not ousted by an election or appointment of his successor if the person so appointed or elected fails to qualify by taking the oath of office.

I am of the opinion that the board now acting as a hold-over board will have to continue as such until the regular election in 1931.