

Opinion No. 35-847

January 7, 1935

BY: FRANK H. PATTON, Attorney General

TO: Mr. H. Vearle Payne, Attorney at Law, Duncan, Arizona.

{*30} This will acknowledge receipt of your letter of January 3rd, 1935, in which you inquire about certain matters of procedure in connection with the bond election by {*31} a municipal school district which you represent.

I will not attempt to answer your questions in the order in which you have set them forth in your letter for the reason that our opinion on one point raised will probably be determinative of the whole matter and will require you to submit the question of bond issue at a new election.

I have reference to the question of the validity of the election already held under the authority of the board of education of the municipal school district. As you recognized in your letter, the proper authority to issue the call for the election as set forth in Sections 120-702 and 120-703, New Mexico Statutes, Compilation of 1929, is the board of trustees of the village comprising the municipal school district. Where such a body exists I do not believe that any election held by virtue of a call from the board of education of said municipal district is valid, and it is also our opinion that Section 120-712, New Mexico Statutes, Compilation of 1929, do not correct this defect.

This latter statute prohibits any person or corporation instituting a suit to contest the validity of the proceedings after ten days from the publication of the certificate of canvass. But it does not validate an election which was void on account of being called by the wrong board. It is entirely possible that the school district might, after the issuance of such bonds in accordance with the election already had, refuse to pay the same on the grounds that there had never been a valid election and in that event I do not believe that Section 120-712, above referred to, would in any way stop or prevent the school district from their refusal to pay the bond.

It is, therefore, our opinion that the school district which you represent should hold a new proper election for the bond issue in accordance with Article 7, Chapter 120 of New Mexico Statutes, 1929 Compilation, and the further amendments in Laws of 1931. We agree with you in your position that a new election can be called this year without violation of the provision that elections on bond issues can be held not oftener than once every two years, since the first election, in our opinion, is void and of no effect.

By J. R. Modrall,

Asst. Atty. General