

Opinion No. 39-3057

March 18, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mr. T. E. Willmon, Chairman of the Board of County Commissioners, Clovis, New Mexico.

{*24} This will acknowledge receipt of your letter dated March 16th, together with enclosures setting out various facts with respect to the recent local option election held in Curry County and the City of Clovis under Chapter 130, New Mexico Session Laws of 1937.

You state the outcome of the election as follows:

"The vote cast in the county, including the city of Clovis, was, for the continuance of the sale of alcoholic liquor 2174. Vote cast against the continuance was 2864. The vote cast inside of the city corporate limits of the city of Clovis for the continuance of the sale of alcoholic liquors was 1632. The vote cast against the continuance inside the corporate limits of the city of Clovis was 1294."

Section 501 of Chapter 130, Laws of 1937 makes it clear that counties containing over 5000 population according to the last United States Census may constitute a local option district and likewise any municipality within any county containing over 5000 population according to the last United States Census constitutes a local option district within the county.

Assuming that Clovis had a population of 5000 or more at the last United States Census it is apparent that for the purposes of Chapter 130 the City of Clovis constitutes {*25} a local option district, and the county of Curry, exclusive of the municipality of Clovis, constitutes a separate local option district within the meaning of said Act. Instead of holding separate elections in the two local option districts a single election was apparently had under the provisions of Section 501 (g) of the Act, which section provides as follows:

"(g) If an election shall be held under the terms of this Act in any county which shall contain within its limits any city of more than five thousand inhabitants, according to the last United States Census, then, and in that event, it shall not be necessary for the legal voters in said city to file a separate petition asking for a separate or different vote on the question of adopting the local option provisions of this Act by said city. The election in said county shall be so conducted as to separate the votes in said city from those in the remaining parts of the county. If the majority of voters in said county, including the votes of said city, shall vote against the sale of alcoholic liquors in said county, said county shall thereby have failed to adopt the local option provisions of this Act, but if the majority of votes in said city shall be in favor of the sale of alcoholic liquors, said city

shall have adopted the local option provisions of this Act. Nothing herein contained shall prevent any such city from having a separate election under the terms of this Act."

In view of the plain language of the Section of the law last quoted, and in view of the facts stated in your letter, it is my opinion that Curry County, exclusive of the municipality of Clovis, is no longer under the local option provisions of the Act, whereas the municipality of Clovis continues so to be.

It is my further view that it now becomes the duty of the Board of County Commissioners of Curry County to declare by order entered in the records of said county that Curry County, exclusive of the municipality of Clovis, has failed to adopt the local option provisions of Chapter 130, Laws of 1937, and further to declare by order entered in the records of said county that the municipality of Clovis has re-adopted the local option provisions of Chapter 130, Laws of 1937.

I notice in your letter that you would like to have the opinion of this office by Monday the 20th. Your request was received only today and we are mailing our opinion to you at once in the hope that you will have the same by Monday.

Trusting the foregoing sufficiently and your inquiries, I am,

By: FRED J. FEDERICI,

Asst. Atty. Gen.