

Opinion No. 41-3703

January 31, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Benj. J. Luchini State Chairman Democratic State Central Committee Santa Fe, New Mexico

{*30} This will acknowledge receipt of your letter of the 31st wherein you request an opinion as to whether or not failure of the directors of a board of education to post notices of a school board election, as required by Section 1, Chapter 85, Laws of 1937, would effect the validity of such election. You state in your letter that one such board did not post the notices required by law until one week after the time set by Section 1. Chapter 85, Laws of 1937.

There are numerous authorities to the effect where a statute itself fixes the time for holding an election, failure to give the {*31} full notice of the election required by law does not invalidate it. The theory of these cases are that such notice is merely directory and not mandatory.

I am of the opinion that the failure of the county board of education to post the notices of election on the first Tuesday in February, as required by Section 1, Chapter 85, Laws of 1937, will not invalidate the election.

Trusting that the foregoing sufficiently answers your inquiry, I am,

By HOWARD F. HOUK,

Asst. Atty. General