

**Opinion No. 41-3718**

February 15, 1941

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. J. V. Gallegos Assistant District Attorney Tucumcari, New Mexico

{\*35} As stated on the telephone to you, voters for school directors are not required to be registered.

You also request an opinion as to what steps may be legally taken where there is a tie in the election of two directors for rural schools.

Section 1 of Chapter 85, Laws of 1937 (Section 120-813, 1938 supplement ) governs the election of rural school directors. No provision is made for cases where a tie results, and Section 41-351, 1929 Compilation, is only applicable to ties in the election of county candidates.

Consequently, where there is a tie in a rural school election no election results, since neither candidate has a majority. In that case a vacancy will exist when the term of the incumbent expires. See paragraph 4, Section 96-107, 1929 Compilation. At that time the vacancy may be filled by appointment by the county board of education under authority of Section 120-815, 1929 Compilation. If not filled, the present incumbent continues in office until so filled. See Section 2, Article XX of the Constitution.

By A. M. FERNANDEZ,

Asst. Atty. General