

January 16, 1937

Mr. Carl D. Hammond
County Attorney
Mohave County
Kingman, Arizona

Dear Sir:

In answer to yours of the 7th inst. wherein you make formal request of this office for an opinion regarding the procedure you should follow in the incorporation of the Town of Kingman. There is no doubt in my mind but what the procedure outlined in Section 367, Revised Code of Arizona, 1928, as amended by Chap. 86, Sec. 1, Session Laws of 1931, is the proper procedure. This statute provides two methods which the board may follow; namely, by petition signed by two-thirds of the real property taxpayer residents in any city or town, containing a population of five hundred or more inhabitants, which petition must be presented to the board, and which must describe the metes and bounds of such city or town, the name, and prayer. No provision is made for notice if the above procedure is followed, and neither is it necessary to call an election. The other method is by petition of only ten per cent of the real property taxpayers in any city or town containing a population of 500 or more inhabitants to the board praying for the calling of an election, the board then shall within sixty days after the filing of said petition call such election, at which election only real property taxpayers who shall also in all respects be qualified electors of the State and of said city or town, shall vote thereat. I have only given you the substance of the statute in order to point out that there are two procedures outlined therein. You will note that in one case no election is necessary and in the other it is. I am assuming that you intend to pursue the latter course.

It is my opinion, after perusing the authorities of the various jurisdictions which have county statutes similar to ours and following the decision of our Supreme Court handed down in the case of McDonald vs. Cochise County, reported in 37 Ariz. Rep. at page 90, that if the machinery for holding an election is not provided, then, under the legislative

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grant of power under Subdivision 22 of Section 744, the Board of Supervisors of Mohave County have the authority to prescribe the manner of holding the election and providing suitable machinery. If the board in effect follows the method set out by Sec. 352, Art. I, Chap. 12, Revised Code of Arizona, 1928, it will undoubtedly be unquestioned.

In regard to question No. 3 of your letter. It is my opinion that since the board is vested with ample powers under Subdivision 3 of Sec. 774, Revised Code of Arizona, 1928, to conduct any election, the funds therefor should be paid out of the election fund. (See Arizona cases as follows: County of Santa Cruz, def, and appt. vs. William H. Barnes, et al., Pltfs. and Appellees reported in Vol 9, Ariz. Rep. at Page 42; also Fullen vs. Calhoun, reported in Vol. 39, Ariz. Rep. at page 40.

Mr. Conway extends his heartiest congratulations on your election to the important office which you now hold.

Assuring you of our cooperation, I am

Very truly yours,

JOE CONWAY
Attorney General

ALBERT M. GARCIA
Assistant Attorney General