

Opinion No. 48-5154

May 25, 1948

BY: C. C. McCULLOH, Attorney General

TO: Mr. J. D. Hannah State Comptroller Santa Fe, New Mexico

{*152} You have requested an opinion of this office as to whether a qualified elector who resides in a county may become a candidate for county commissioner in any commissioner's district in that county, or whether that person is restricted to candidacy for the commissioner's district in which he resides.

Article 5, Section 13, New Mexico Constitution, provides that:

"All district, county, precinct and municipal officers, shall be residents of the political subdivision for which they are elected or appointed."

Section 15-3503, New Mexico 1941 Compilation, provides that:

"Each county shall be divided by the first board of commissioners holding office, into three (3) compact districts, as equal in proportion to population as possible, numbered respectively by one, two and three, and shall not be subject to alteration oftener than once in two (2) years, and one (1) commissioner shall be elected from each of such districts by the votes of the whole county. Such division of the county into districts shall be made within six (6) months after the first board of commissioners of the county have been elected to office."

Since a commissioner's district is not a political subdivision such as is contemplated under Article 5, Section 13 of the New Mexico Constitution, it is our opinion that any person who is a qualified elector and a resident of the **county** is eligible to become a candidate for any one of the county commissioner's districts within that county. It is not required that the candidate be a resident of the particular county commissioner's district for which he seeks election. All that is required is that he be a resident of the **county** and a qualified elector.

Another question has been posed by the facts involved and that is whether a county clerk has the authority to refuse to place the name of a candidate on the primary ballot after that county clerk has accepted for filing the nominating petitions and declaration of candidacy.

This office recently held in Opinion No. 5151, a copy of which is enclosed, that a county clerk does not have authority to refuse to place the name of a candidate on the primary ballot once that clerk has accepted for filing the nominating petitions and declaration of candidacy.

By WILLIAM R. FEDERICI,

Asst. Atty. General