

Opinion No. 52-5490

February 11, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Honorable Beatrice B. Roach Secretary of State Santa Fe, New Mexico

{*205} This is in reply to your inquiry of February 8th, 1952, in which you request an opinion as to the qualifications of candidates for the State Legislature, both Senate and House of Representatives, insofar as their place of residence or domicile is concerned. An examination of our Constitution reveals that Section 3 of Article 4 contains no specific requirement as to residence or domicile as did the same section when originally enacted. As originally enacted the Constitution in Section 3 stated as to qualifications of Senators or Representatives,

{*206} ". . . who shall be qualified electors of their respective districts and residents of New Mexico for at least three years next preceding their election."

However, Section 3 was amended in 1949, so that the portion in respect to the qualifications of members states only:

"Senators shall be not less than 25 years and representatives not less than 21 years of age at the time of their election. No person shall be eligible to the legislature who, at the time of qualifying, holds any office of trust or profit under the state, county or national governments. . ."

The amendment left out the language as to the necessity that the representatives or senators be qualified electors of their districts and also that they be required to have been residents of New Mexico for three years. This amendment would seem to remove those restrictions and leave the requirements as to residence insofar as candidates for the legislature are concerned to the general requirements set up by Section 13 of Article 5 of the New Mexico Constitution, which states:

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

In order to know what is intended by our laws with regard to residence it would be well to examine the definition which is set out in our election code. Section 56-101 of the New Mexico Statutes Annotated, which was amended as late as 1947, states:

"A person's residence shall be that place wherein he legally resides and has his domicile and from which when temporarily absent he intends to return."

It is obvious that our Constitution requires a legislator to be a resident of the district or county he is to represent. As to what constitutes residence the best guide which we can

follow is that set forth by our Legislature in our election laws and which is defined as just previously quoted, the place wherein he "legally resides and has his domicile." Legal residence is the place where a man intends to reside. A person's domicile is largely a matter of intent. For the purposes of our election laws legal residence and domicile are synonymous, as stated in **17 Am. Jur. at 592:**

. . . "a home may be relinquished and abandoned, while the domicile of the party upon which depend many civil rights and duties, may in legal contemplation remain."

It is my opinion that in the case of your Senator or Representative who actually maintains a house and lives in it most of the time outside of the district in which he by his intention maintains his legal residence as further evidenced by his voting registration, is properly qualified under our statutes as a resident of the district in which he maintains his residence by intention and his voting registration and that he may properly be elected from such district to the Legislature.

I trust that this will answer your inquiry fully.