

Opinion No. 54-5888

January 18, 1954

BY: RICHARD H. ROBINSON, Hilario Rubio

TO: Mr. La Vor W. Burnham Assistant District Attorney Aztec, New Mexico

{*324} Receipt is acknowledged of your letter dated January 11, 1954 in which you have requested of this office an opinion upon the following set of facts:

Supporters of an incumbent probate judge in your County, who has served two terms, wants to know if the law permits him to run for probate judge for a third term. In other words, you want to know whether the present probate judge is limited to two terms in office as are other county officers.

Article 10, § 2 of the Constitution of New Mexico provides as follows:

"All county officers shall be elected for a term of two years, and **after having served two consecutive terms**, shall be ineligible to hold any county office for two years thereafter." (Emphasis ours.)

This provision of the Constitution is mandatory and a probate judge, being a county officer and who has served two full terms of office, is ineligible to be elected to a third term immediately after having served two consecutive terms. In other words, he would have to wait two years before he could run again for a third term as probate judge.

You will recall that prior to the amendment proposed in the year 1913, the above quoted section of the New Mexico Constitution read as follows:

"All county officers shall be elected for a term of four years and no county officer, except the county clerk and probate judge, shall, after having served one full term be eligible to hold any county office for four years thereafter."

However, on November 3, 1914, the present constitutional amendment was adopted at the general election by a vote of 20,293 for, and 12,125 against. You will note that before this present amendment an exception was made in the offices of county clerk and probate judge and the present constitutional amendment does not include these two exceptions. Therefore, it is our interpretation of this constitutional provision that it was the intention of the legislature to leave out these two exceptions, which included county clerks and probate judges, and the law, as it is today, bars all county officers from being elected or appointed, after they have served two full terms, to another term in any county office, and this includes probate judges.

It is, therefore, the opinion of this {325} office that Article 10, § 2 of the Constitution makes the probate judge in your County of San Juan ineligible to be elected to another term as probate judge since he has served two full consecutive terms as probate judge.

Trusting that this fully answers your inquiry, I remain

Assist. Attorney General