

**Opinion No. 54-5907**

February 19, 1954

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Honorable Edwin L. Mechem Governor State of New Mexico Santa Fe, New Mexico

{\*348} On February 15th you addressed an inquiry to this office asking whether or not your power to fill the vacancy for the office of County Commissioner is restricted to persons residing within the limits of the district which is vacant.

Section 15-3503 of the 1941 Compilation, reads as follows:

"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."

In Attorney General's Opinion No. 5154 dated May 25, 1948, this office held that the County Commission District is not a political subdivision such as is contemplated under Art. 5, Section 13 of the New Mexico Constitution. We held in that opinion that the Commissioners may be elected from any place within the County to represent any given district.

In **Gibbany vs. Ford**, 29 N.M. 621, the Supreme Court held that wards of a city were not political subdivisions within the contemplation of Art. 5, Section 12 of the New Mexico Constitution, and that any person who is qualified to hold public office under Art. 7, Section 2 of the New Mexico Constitution, can hold such office so long as he is a resident of a subdivision as defined in Art. 5, Section 13.

The only reference to the filling of vacancies in the office of County Commissioner, is Article 20, Section 4, of the Constitution of the State of New Mexico.

It is therefore the opinion of this office that the appointment of a County Commissioner, where a vacancy exists, may be made regardless {\*349} of the district wherein the person resides so long as that person is otherwise qualified under the Laws of the State, and he is a resident of the County.

We sincerely hope that this answers your inquiry.

By: Fred M. Standley

Assist. Attorney General