

Opinion No. 55-6112

February 22, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable Calvin Horn, State Senator, Santa Fe, New Mexico

Through an attorney in Albuquerque, you have requested an opinion from this office relative to the constitutionality of the House amendment to House Bill No. 5, which requires one of the additional judges of the Second Judicial District Court to be a resident of Sandoval or Valencia counties. I have not seen the exact language of this amendment nor the position of the amendment with reference to the language in House Bill No. 5, and therefore do not know whether the amendment is severable from the entire act or not, nor whether, in the event the amendment should be held invalid, it would affect the validity of the entire act.

District judges are constitutional officers and the residence qualifications of a person seeking the office of district judge are set out in Article 6, Section 14 in the following language:

"Each district judge shall reside in the district for which he was elected."

In connection with Article 7, Section 2 and Article 5, Section 13, regarding residence requirements of public officers generally, the Supreme Court, in *Gibany vs. Ford*, 29 NM 621, held a statute invalid which added to the constitutional residential qualifications, the requirement that a member of a city council must be a resident of the ward which he seeks to represent. Since the residence requirement for district judges is similar to that contained in Article 5, Section 13 for officers generally, it is assumed that the Supreme Court in a proper case would reach a similar decision as in the case of *Gibany vs. Ford* concerning the amendment in House Bill No. 5.

In 47 ALR 481, the general statement of the law relative to this question appears as follows:

"With but one exception, the courts have recognized the general rule that when a state Constitution names the qualifications for a constitutional office, the legislature has no authority to prescribe additional qualifications, or to remove any of the requirements provided for in the Constitution, unless that instrument, expressly or by implication, gives the legislature such power."

In 34 ALR 2d 155, at p. 171, this language appears:

"It is quite generally considered that where the constitution lays down specific eligibility requirements for a particular constitutional office, the constitutional specification in that

regard is exclusive and the legislature (except where expressly authorized to do so) has no power to require additional or different qualifications for such constitutional office."

In view of the Supreme Court decision in *Gibany vs. Ford* and the weight of authority reflected in the two ALR citations, it is our opinion that should the legality of the amendment to House Bill No. 5 be presented to the Supreme Court in a proper case, the Court undoubtedly would hold the amendment to be invalid.

By C. C. McCulloh

Assistant Attorney General