

Opinion No. 56-6406

March 13, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable Gordon Melody, State Senator, 614 E. Lincoln Avenue, Las Vegas, New Mexico

You have presented for the opinion of this office the questions:

1. What is the proper method of determining the victor in elections for aldermen or council members within municipalities?
2. Is the requirement that aldermen or council members of a municipal governing body be real property owners within that municipality unconstitutional?

Your first question relates to the proper interpretation of Section 14-15-2, N.M.S.A., 1953, which provides in part:

"The qualified electors of cities shall on the first Tuesday of April of each even-numbered year elect one (1) mayor for the term of two (2) years, and shall elect one (1) alderman from each ward, who shall hold their offices for the period of four (4) years. . . ."

This section was construed by our Supreme Court in the case of Wright vs. Closson, 29 N.M. 546 (1924). Although this section has been amended since it was construed in Wright vs. Closson, above, that decision is still, for the purposes of your question, binding. As that decision affects your problem, the following quotation from that case is decisive:

"We, therefore, conclude that members of a **city council should be elected by the qualified electors throughout the municipality at large**, and not from their respective wards only, and the lower court so held." (Emphasis supplied.)

Thus, the candidate receiving the highest number of votes on a municipality-wide basis, and not a ward to ward basis, is the elected alderman or council member. For example, "X" candidate receives more votes than "Y" candidate throughout the municipality. "X" candidate, however, is beaten by "Y" candidate in two of the three wards. "X" candidate is nevertheless the winner.

Thus, the candidate receiving the highest number of votes from the municipality at large is the elected alderman or council member.

Concerning your second question, it will be noted that Section 14-17-3, N.M.S.A., 1953, prescribing the qualifications of aldermen or trustees of municipalities, among other

things, prescribes that they shall be "owners of real estate subject to taxation situated within corporate limits." Section 2 of Article 7 of our State Constitution provides, in part:

"Every citizen of the United States who is a legal resident of the state and is a qualified elector therein, shall be qualified to hold any public office in the state except as otherwise provided in this constitution. . . ."

Section 13 of Article 5 of the Constitution, provides that:

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

In *Gibbany vs. Ford*, 29 N.M. 621 (1924), it was held that the Legislature could not impose additional qualifications for holding office to those contained in the State Constitution. Those qualifications are contained in the two constitutional provisions above. Article 7, Section 2 and Article 5, Section 13.

It is the opinion of this office that the additional real property holder qualification for the office of city council members or aldermen of municipalities is such as is prohibited by the constitutional provisions above and the interpretation placed thereon in *Gibbany vs. Ford*, supra. It will be noticed that Section 14-17-3, was passed prior to the time that we adopted our Constitution. This office in Opinion No. 736, dated March 5, 1934, expressed doubt that the real property qualification was constitutional. That opinion is reaffirmed and if that opinion fell short of ruling it unconstitutional, we, at this time, take that step. Your second question is therefore answered in the affirmative.

A copy of Opinion No. 736 is enclosed for your information. We trust the above answers your inquiries.

By: Santiago E. Campos

Assistant Attorney General