

Opinion No. 56-6445

May 23, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Terrance L. Dolan, Assistant District Attorney, Second Judicial District, Bernalillo County Court House, Albuquerque, New Mexico

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

"Must a Justice of the Peace actually reside and live in the precinct for which he is running for office or to which he may have had an appointive position?"

Section 13, Article V of the New Mexico Constitution, provides that:

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

Resident, within the meaning of this section of the Constitution, has traditionally been construed as synonymous with "domicile". And, as you know, a "domicile" may be established and, although one may remove himself physically from that "domicile", if he intends to return, his "domicile" remains as originally established. This concept of "residence" is enunciated in Section 3-1-1, N.M.S.A., 1953, in the last paragraph.

"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."

In short, "residence" for voting and election purposes, is established initially by actual residence and intent to make that place a home. After "residence" is thus established, the person may move elsewhere and if he intends to return, his "residence" for voting and election purposes remains as established.

Regarding the above constitutional provision, our Supreme Court in *State vs. Williams*, 57 N.M. 588, said:

". . . A man can have only one place of residence for voting purposes, but there is no reason, why, within the meaning of the above sections of the constitution, he may not have more than one place to reside in. . . ."

"In case of doubt as to a voter's residence, it is resolved in favor of the permanency of residence in the precinct where he casts his ballot. . . ."

The above then is the sense in which "residence" is used for voting and election purposes. Now *Gibbany vs. Ford*, 29 N.M. 621, construing Article V, Section 13 of the Constitution, cited above, held that no additional qualifications could be attached to the

holding of an office other than those contained in this section and Article VII, Section 2. If the Legislature attempted to impose as a qualification on a Justice of the Peace that he should actually live within the precinct for which he is elected, in all possibility such a qualification would be unconstitutional. For "residence", as used above, may be retained in a political subdivision even though a person may, in fact, be living outside of that subdivision. Your question is, therefore, answered in the negative.

Regarding the particular Justice of the Peace which you ask about, it may be stated that he may have, in fact, abandoned his residence, i.e. "domicile", in the precinct in which he formerly lived. This is a question of fact and one upon which we cannot pass. If a court would find this to be the case then, of course, the person would not be entitled to hold the office in that precinct.

I trust the above helps answer your inquiry.

By: Santiago E. Campos

Assistant Attorney General