

## Opinion No. 58-104

May 22, 1958

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

**TO:** Honorable Fred Cole, State Representative, Eddy County, Artesia, New Mexico

### QUESTION

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Does Proposed Constitutional Amendment No. 5 (Laws 1957, p. 720) include representatives in the State Legislature?

#### CONCLUSION

No.

### OPINION

#### ANALYSIS

Your question grows out of the above proposal to amend our Constitution. The joint resolution provides:

"Be It Resolved by the Legislature of the State of New Mexico:

Section 1. It is proposed to amend Article 10, Section 2 of the constitution of New Mexico to read:

"Section 2. All **county officers** shall be elected for a term of four years'.

Section 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date which may be called for such purpose." (Emphasis ours)

It does not define county officers; hence, we must determine whether a member of the House is a county officer or a state officer.

Close attention should be paid to what the proposal would amend. It would be restricted to an amendment of the 10th Article treating of the classification of **counties**, the fixing of salaries of **county** officers by the Legislature, the terms of **county** officers, restrictions upon the removal of **county** seats, and directions to the Legislature for

formation of combined city and **county** corporations. Obviously, Article X deals with local government and officers.

By way of comparison, the joint resolution made no reference whatsoever to Article IV, treating of the Legislative Department.

While the foregoing is hardly conclusive, it is some indication, at least, the Legislature in the joint resolution above had no intent to place before the electorate an issue altering the term of office of House members.

First, we have no hesitancy in holding a member of the House to be **an officer**. The five elements set forth in **State ex rel. Gibson v. Fernandez**, 40 N.M. 288, 58 P. 2d 1197, are clearly satisfied.

A somewhat more serious problem is presented by the fact a member of the House is elected from a county, not from the state at large. And yet, we believe this matter is disposed of by **State ex rel. Ward v. Romero**, 17 N.M. 88, 125 P. 617. There, an issue was whether the district attorney was a district officer or a state officer. Our Supreme Court held the term "district" simply designated the geographical limits within which the duties of his office were to be exercised, and had nothing to do with the nature and grade of office.

Here, a member of the House, while he had a limited geographic constituency as does a district attorney, nonetheless performs duties of state-wide concern and interest. The votes he casts upon proposed legislation are of vital concern to every county, his own included, and to every person in New Mexico. In the Ward case, it was the fact of duties and functions which concerned the state at large which seemed most persuasive. That is so here.

In Opinion of the Attorney General No. 5938, rendered April 8, 1954, it was held a county assessor then completing his second (and presumably consecutive) term in office, could legally seek and hold membership in the House. The reasoning was that a county assessor is a county officer (citing Article X, Sec. 2), but that a member of the House is a state officer, relying on the reasoning of the Ward case. While not precisely in point, the Opinion is strong authority here.

Our holding seems to be in accord with the general law. See 42 Am. Jur., Public Officers § 20, stating a state representative is a state officer.

We hold Proposed Constitutional Amendment No. 5, if it carries, will not alter the term of office of a member of the New Mexico House of Representatives.