

## Opinion No. 59-103

August 13, 1959

**BY:** HILTON A. DICKSON, JR., Attorney General

**TO:** The Honorable John F. Rice State Senator 2102 Inez Drive, N.E. Albuquerque, New Mexico

{\*161} This is in reply to your recent inquiry expressing the following questions:

1. What interpretation should be made of the clause "and shall reside at the state capitol during the time he continues in office", as included in § 68-4-6, N.M.S.A., 1953 Compilation?
2. Would a Public Service Commissioner be complying with the above mentioned statute should he continue to reside in a city other than the State Capitol although he commutes daily to his office at the Capitol?
3. In view of the first clause in the above mentioned statute which reads, "Each member of the commission shall devote his whole time to his official business", may such a commissioner during his term of office continue as precinct chairman of his political party in the city where he has maintained his residence?

In our opinion, the conclusions to your questions are as follows:

{\*162} 1. The word "reside", as used in § 68-4-6, is interpreted to mean that a Public Service Commissioner must live or dwell in Santa Fe, the State Capital.

2. No.

3. Yes.

To fully understand our response to your above questions, we believe it necessary to set forth § 68-4-6, N.M.S.A., 1953 Compilation, in its entirety. This section reads as follows:

"Residence of members of commission -- Whole time given to work. -- Each member of the commission shall devote his whole time to his official business, and shall reside at the state capitol during the time he continues in office."

The term "reside", as used therein, is elastic and should be interpreted in light of the object or purposes of the statute in which the term is employed. **State v. Williams**, 57 N.M. 588, 261 P. 2d 131; **McGrath v. Stevenson**, (Wash.) 77 P. 2d 608. The term may have many meanings depending upon the purposes for which it is included in the particular statute involved. It sometimes is employed in the legal sense, that is, as

related to residence or domicile, particularly as related to purposes of jurisdiction or voting. At other times, the use of the word "reside" means to dwell, or to live, or as one commonly uses the word. In our opinion, in using the term "reside" in the above section, the intention of the Legislature was the latter definition, that is, to dwell or to live. This interpretation is compatible with the interpretation made by this office in construing the language of Article V, Section 1 of the State Constitution. See Opinion No. 59-19, dated March 3, 1959.

We have found only one case which has construed language like that used in § 68-4-6. This case, decided by the Supreme Court of Colorado and entitled **People v. Owers**, 69 P. 515, discussed the use of the word "reside" found in Section 29 of Article 6 of the Colorado Constitution. This section required that all judicial officers provided for in the article shall respectively **reside** in the district, county, precinct, city or town for which they may be elected or appointed. The Court in that case, at page 518, stated as follows:

"The word "reside" may, and sometimes does, have different meanings in the same or different articles or sections of a constitution or statute; but the direction here that a district judge shall reside within his district manifestly was not intended for his convenience, but for the benefit of the people, whose servant he is. Doubtless one, if not the only, object of the section was to compel the officer to maintain his residence where litigants might expeditiously, and with as little expense as possible, have access to him for the transaction of official business. Bearing this in mind, it is quite clear that 'residence' here means an actual, as distinguished from a legal or constructive, residence or (its equivalent) domicile; . . ."

In view of the above construction and because the same wording is used in § 68-4-6 as is used in Article V, Section 1 of our Constitution, we are of the opinion that the Public Service Commissioners must actually live or dwell in the City of Santa Fe wherein the State Capitol is located.

The answer to your second question is covered by the above discussion on your first question.

In answer to your third question, it is our opinion that there is no conflict between the requirement that a Public Service Commissioner devote his "whole" time to his official business and his continued political activities within the city wherein he has maintained his residence. To again quote from **People v. Owers**:

{\*163} "This section, however, should be given a reasonable, and not a purely technical or literal, interpretation. For instance, no one would say that it was necessary for a district judge actually to reside and be physically present in his judicial district every hour or day or week or month, or continuously every year during his term of office."

Neither would it, in our opinion, be reasonable to assume that the Legislature intended that a state officer should devote 24 hours a day to his official duties. In our opinion, this

statute means that one serving as a member of the Public Service Commission may not be otherwise employed, nor can he receive compensation for employment other than that as a Public Service Commissioner. However, it does not intend that in his free time and apart from his official duties he may not engage in outside activities, whether the same be of a political or a social nature. Certainly, it could not be contended that such commissioner would have to forfeit membership or office in a fraternal or social organization. Similarly, we do not believe that it intends that he must forfeit membership or office in the political party of his choice. Further, the question of whether he remains eligible because of the change of dwelling is one for determination in accordance with the by-laws and rules of that organization.

This opinion should not be construed as requiring a Public Service Commissioner to change his residence in the sense that he cannot maintain a home at his former address or retain his residence there for voting purposes.

We trust this will answer your request.

By Thomas O. Olson

Assistant Attorney General