

## **Opinion No. 62-147**

December 20, 1962

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Thomas A Donnelly, Assistant Attorney General

**TO:** Mr. Fred E. White, Assistant District Attorney, Farmington, New Mexico

### **QUESTION**

#### **FACTS**

The County Commissioners of San Juan County, New Mexico have effectuated certain precinct boundary changes in Precinct 15. Due to the change, a portion of Precinct 15 will be included in Precinct 16, effective January 1, 1963. The part of Precinct 15 which will then become part of Precinct 16 now includes the residence and place of business of the present justice of the Peace Precinct 15. A new justice of the peace will take office January 1, 1963 to preside over the newly adjusted area comprising Precinct 15, and the present justice of the peace for Precinct 15 as been elected to preside in Precinct 16.

#### **QUESTION**

Should all the records of the justice of the peace for Precinct 15 remain at their present location and, thus become records of Precinct 16, or should such records and cases on the docket be transmitted or turned over to the new justice of the peace for Precinct 15?

#### **CONCLUSION**

The records, files and pending cases should be transmitted to the office of the new justice of the peace for Precinct No. 15, San Juan County, New Mexico, upon his qualifying and assuming office.

### **OPINION**

#### **ANALYSIS**

The problem posed in respect to the disposition of the records, documents and pending cases due to the realignment of precinct boundaries is controlled by several applicable New Mexico statutes. Section 36-20-1, N.M.S.A., 1953 Compilation, provides that a justice of the peace shall, under penalty of law, upon retiring from office deliver to his successor, the archives and documents pertaining to his office.

Section 36-1-8, N.M.S.A., 1953 Compilation, requires that upon the termination of office by a justice of the peace, the docket, books, records, papers and documents pertaining to his office be delivered to the nearest justice of the peace.

Since the present justice of the peace for Precinct 15 will be vacating such office and, on January 1, 1963 will assume the duties of a new office -- justice of the peace of Precinct 16 -- the records presently belonging to Precinct 15, together with all pending cases filed in justice of the peace court, Precinct 15 should be transmitted to the newly qualified justice of the peace for Precinct 15 as soon after January 1, 1963 as is practicable.

The statutes referred to above embody the general rule recognized by the courts that a person, upon vacating a particular office or public position must, on retiring from such post, deliver his emoluments of office and the official records pertaining to such office to his successor. This rule is stated in 51 C.J.S., "Justice of the Peace," Section 46, at page 90:

". . . as a general rule when a justice goes out of office his docket and official papers are required to be transferred to his successor, who is authorized to complete all unfinished business . . ."

In addition to the statutes above cited, it should be noted that Section 5-6-9, N.M.S.A., 1953 Compilation, provides that public officials turn over to their successors all official documents, including lawbooks belonging to the office. Section 36-20-1.1, N.M.S.A., 1953 Compilation, also specifies that copies of New Mexico statutes and current laws relating to motor vehicles from the commissioner of motor vehicles be delivered to each justice of the peace's successor in office, or be returned to the issuing office.

It is our conclusion, in light of the above quoted authorities, that upon the present justice of the peace for Precinct 15 vacating such office, the official records, documents, pending cases and lawbooks or other official emoluments of office should be transmitted to the newly qualified justice of the peace for Precinct 15, since these items and cases are a part of Precinct 15. Similarly, all records, cases or books now belonging to Precinct 16 should be transmitted to the new justice of the peace for Precinct 16, upon his qualifying and taking such office.