

Opinion No. 67-137

November 16, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Ernestine D. Evans Secretary of State State of New Mexico Santa Fe, New Mexico

QUESTION

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Does the 1967 Presidential Voting Act (Laws 1967, Chapter 125) violate Article 7, Section 1 of the New Mexico Constitution?

CONCLUSION

Yes.

OPINION

{*221} ANALYSIS

Laws 1967, Chapter 125, denominated the "Presidential Voting Act," defines "new resident" as follows:

" 'new resident' means any citizen of the United States not qualified to vote in New Mexico by reason of his period of residence in this state who, immediately prior to his removal to New Mexico, was a citizen of another state and **who has been a resident of this state for not less than thirty days prior to a presidential election.**" (Emphasis added)

The Act goes on to provide as follows in Section 3:

"Any new resident may vote for presidential and vice presidential electors at any presidential election, but for no other offices, if he:

A. otherwise possesses the substantive qualifications to vote in this state, **except the requirement of residence** and registration; and

B. complies with the provisions of the Presidential Voting Act." (Emphasis added)

The provision is clearly contrary to Article 7, Section 1 of the New Mexico Constitution. In perfectly understandable terms the Constitution requires that the voter **reside** in New Mexico twelve months, in the county ninety days, and in the precinct thirty days prior to an election.

The above-mentioned constitutional provision has never been held to violate the Federal Constitution. See **Arledge v. Mabry**, 52 N.M. 200, 195 P.2d 621.

By: Oliver E. Payne

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