

Opinion No. 68-114

November 12, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Honorable Carter W. Kirk State Representative P.O. Box 712 Deming, New Mexico

QUESTION

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Must a qualified elector of a county be a licensed engineer or land surveyor to hold the office of county surveyor?

CONCLUSION

Yes.

OPINION

{*184} **ANALYSIS**

Article VII, Section 2 of the New Mexico Constitution, as amended in 1961, sets forth the qualifications that must be met before an individual may hold a public office as follows:

"A. Every citizen of the United States who is a legal resident of the state and is a **qualified elector** therein, shall be qualified to hold any elective public office except as otherwise provided in this Constitution.

B. The legislature may provide by law for such qualifications and standards as may be necessary for holding an appointive position by any public officer or employee."

Article VII, Section 1 of the New Mexico Constitution defines who is a "qualified elector" for most purposes.

Section 15-41-1, N.M.S.A., 1953 Compilation creates the office of county surveyor and sets forth qualifications for holding the office as follows:

"The office of county surveyor is created in the several counties. No person is eligible to hold the office who is not a practical land surveyor actually engaged in the business. A county surveyor shall be elected for each county in the same manner that other county officers are elected and he shall hold his office for the term of two years and until his successor is elected and qualified. His term of office shall commence on January 1 succeeding his election."

It thus appears that the legislature has created qualifications for holding the office of county surveyor in addition to those set forth in the Constitution.

There are two New Mexico cases dealing with the problem of the legislature prescribing qualifications to the right to hold public office in addition to those contained in the Constitution. In **Gibbany v. Ford**, 29 N.M. 621, 225 Pac. 577 (1924), the New Mexico Supreme Court held as follows:

"Manifestly . . . the Legislature is without power to make added restrictions as a qualification to the right to hold the office of alderman. To permit it to do so would authorize the superaddition of requirements to hold office beyond those provided by the Constitution." Id. at 625.

The New Mexico Supreme Court relied on the case of **Board of Commissioners of Guadalupe County v. District Court of Fourth Judicial District**, 29 N.M. 244, 223 Pac. 516 (1924) for its holding in **Gibbany v. Ford**, supra.

In **Board of Commissioners of Guadalupe County**, supra, the New Mexico Supreme Court defined the word "qualified" as used in Article VII, Section 2 of the New Mexico Constitution beyond the definition {**185*} of "qualified voter" as used in Article VII, Section 1 of the New Mexico Constitution. In discussing the meaning of the word "qualified" as used in Article VII, Section 2, supra, the Supreme Court said:

"Article 7, § 2 of which is above quoted, relates generally to the elective franchise and right to hold office. It is concerned entirely with the definition of the personal qualifications and characteristics of persons who may vote, hold office, and sit as jurors. It does not purport to deal with anything else. Under such circumstances, the word "qualified," as employed in the section, must be held to be the equivalent of the word "eligible." **The section is designed merely to point out the class of persons who are eligible to be chosen to hold public office and does not in any way attempt to deal with the subject of how, and in what manner, these officers shall qualify before entering upon the discharge of their duties.**" (Emphasis added).

The Supreme Court concluded that the legislature could require public officers to provide a bond without violating Article VII, Section 2 of the New Mexico Constitution.

The question then is whether the requirement that a person be a practical land surveyor to hold the office of county surveyor is merely an attempt to deal with the subjects of how, and in what manner, these officers shall be qualified before discharging their duties as county surveyor. Although the question is a very close one, it is our opinion that Section 15-41-1, supra, does not violate Article VII, Section 2 of the New Mexico Constitution by requiring county surveyors to be practical land surveyors.

Persons who are actually engaged in the business of land surveying must be licensed pursuant to the Engineering Practice Act, Sections 67-21-26 through 67-21-53,

N.M.S.A., 1953 Compilation. Therefore it will be necessary to be a licensed surveyor to qualify for county surveyor under Section 15-41-1, N.M.S.A., 1953 Compilation.

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