

## Opinion No. 69-08

February 11, 1969

**BY:** OPINION OF JAMES A. MALONEY, Attorney General Robert J. Laughlin,  
Assistant Attorney General

**TO:** Mr. William Henry Mee, Attorney, New Mexico Legislative Council, 334 State  
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### QUESTIONS

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A. Is the requirement in Section 36-2-1, N.M.S.A., 1953 Compilation, that magistrates must have the equivalent of a high school education unconstitutional?

B. Is the requirement in Section 36-2-1, N.M.S.A., 1953 Compilation, that magistrates in magistrate districts having a population of more than one hundred thousand be members of the state bar and licensed to practice law unconstitutional on the ground that magistrates in other magistrate districts do not have to be licensed to practice law or be members of the state bar?

#### CONCLUSIONS

A. No.

B. No.

### OPINION

#### {\*14} ANALYSIS

The Constitution of the State of New Mexico, Article VII, Section 2, provides in part as follows:

"A. Every citizen of the United States who is a legal resident of the state and is a qualified elector therein, shall {\*15} be qualified to hold any elective public office except as otherwise provided in this constitution."

The New Mexico Supreme Court in the case of **Gibbany** v. Ford, 29 N.M. 621, 225 P. 577, held that the legislature has no power to make added restrictions to such right to hold public office unless provided for elsewhere in the Constitution. There is no problem, however, with the requirement in Section 36-2-1, N.M.S.A., 1953 Compilation, that magistrates must have the equivalent of a high school education. Article VI, Section 26 of the New Mexico Constitution gives the legislature the power to prescribe

qualifications for magistrate court judges. Thus, the requirement that any additional qualification be elsewhere provided for in the Constitution is met.

Section 36-2-1, supra, also provides that magistrates in districts with a population of more than one hundred thousand persons be licensed to practice law in this state. The question is whether this requirement violates the "equal protection of the laws" provision of Article II, Section 18, of the Constitution of New Mexico, or the provision against local or special laws contained in Article IV, Section 24, of the Constitution.

The New Mexico Supreme Court has on several occasions held that neither the guarantee of the equal protection of the laws or the provision against local or special laws deny to the legislature the right to classify along reasonable lines. **Gruschus v. Bureau of Revenue**, 74 N.M. 775, 339 P. 2d 105; **State v. Thompson**, 57 N.M. 459, 260 P. 2d 370; **State v. Atchison, Topeka & Santa Fe Railway Co.**, 20 N.M. 562, 151 P. 305; **Pueblo of Isleta v. Tondre**, 18 N.M. 388, 137 P. 86.

In the case of **Hutchison v. Atherton**, 44 N.M. 144, 99 P. 2d 462, the New Mexico Supreme Court held that the legislature's voice upon the subject of classification for the purposes of legislation is supreme as long as there is any reasonable basis for the distinction employed, and the fact that it appears unreasonable to the courts is not decisive. In that case it was held that a statute authorizing first-class counties to establish juvenile detention homes and limiting it to first-class counties was not unreasonable discrimination.

It is the opinion of this office that the requirement that magistrates in magistrate districts having a population of one hundred thousand persons or more be lawyers is a reasonable legislative classification.