

Opinion No. 76-02

January 28, 1976

BY: OPINION OF TONEY ANAYA, Attorney General W. Royer, Assistant Attorney General

TO: Senator Ray Leger, Executive Legislative Building, Santa Fe, New Mexico 88503

QUESTIONS

QUESTIONS

Must a candidate for election as a County Commissioner be a resident of the district from which he seeks election?

ANSWER

See Analysis.

OPINION

{*46} ANALYSIS

Article V, Section 13 of the New Mexico Constitution provides the constitutional basis upon which the legislature may require a County Commissioner to be a resident of the district from which he is elected. It provides:

All district, county, precinct and municipal officers, shall be residents of the political subdivisions for which they are elected or appointed. The legislature is authorized to enact laws permitting division of counties of this state into county commission districts. The legislature may in its discretion provide that elective county commissioners reside in their respective county commission districts.

The legislature has exercised its discretion by enacting Section 15-37-3, {*47} NMSA, 1953 Comp. (1975 Supp.). It provides:

A. Each county **may** be divided by the board of county commissioners into three [3] compact districts as equal in proportion to population as possible, numbered respectively as one [1], two [2] and three [3] and, if so divided, shall not be subject to alteration oftener than once in two [2] years. One [1] commissioner shall be elected from each district by the votes of the whole county **but he shall be a resident of the district from which he is elected.** If made, the division of the county into three [3] districts shall be made within six [6] months after the board of county commissioners is elected to office.

B. Any board of county commissioners of counties of the H class **may**, by resolution adopted in any calendar year in which no election of county commissioners is held, provide that the three [3] county commissioners shall be elected at large and **without division** of the county into districts, but the resolution shall not be subject to repeal, revision or amendment for a period of two [2] years following its adoption.

C. The board of county commissioners of any county having a population of more than one hundred thousand [100,000], as shown by the most recent decennial census, and having a final, full assessed valuation in excess of seventy-five million dollars (\$ 75,000,000) **shall** be divided into five [5] county commission districts as provided by law, and as equal in proportion to population as possible. Such apportionment shall be made once after each federal decennial census. **One [1] commissioner shall be elected by the voters of each district and shall be a resident of the district from which he is elected.** (Emphasis added.)

Two separate categories of counties are established by Section 15-37-3, **supra**, and the rules governing each are different. In counties that have a population of more than 100,000 and an assessed valuation in excess of \$ 75,000,000 (Bernalillo County only at present), the Commissioners must be a resident of the district from which they are elected. In all other counties, the decision to district and require residency from such districts is discretionary with the Board of County Commissioners.

Each of the thirty-one counties that fall within the latter category must be individually considered. If the Board of County Commissioners presently in office established districts within the county within six months after taking office in 1975, the county commissioners to be elected in 1976 must be residents of the districts from which they are elected. If a division into districts was not made by the Board of County Commissioners within the prescribed time period, the commissioners to be elected in 1976 need not be residents of particular districts.