

**Opinion No. 78-01**

January 13, 1978

**OPINION OF:** Toney Anaya, Attorney General

**BY:** Jill Z. Cooper, Deputy Attorney General

**TO:** Senator Manny Aragon, 1001 Marquette, N.W., Albuquerque, New Mexico 87102

COUNTY COMMISSION; ARTICLE X, SECTION 2; ARTICLE X, SECTION 7; TERM OF OFFICE

County commissioners may serve only two consecutive terms in office regardless of the length of the term.

**QUESTIONS**

May a county commissioner who has served one term in office under Article X, Section 2 of the New Mexico Constitution and one term of office under Article X, Section 7 of the New Mexico Constitution seek a third consecutive term?

**CONCLUSIONS**

No.

**ANALYSIS**

Article X, Section 2, New Mexico Constitution, provides that all county officers

". . . shall be elected for a term of two years, and after having served two consecutive terms, shall be ineligible to hold any county office or two years thereafter."

**OPINION**

Section 15-37-2(A), NMSA 1953 Comp. provides that a board of county commissioners shall consist of three qualified electors. Prior to 1973, Article X, Section 2 and Section 15-37-2(A), **supra**, were applicable to all county commissioners.

On November 6, 1973, Article X, Section 7, New Mexico Constitution was adopted to provide that in counties with populations greater than one hundred thousand and assessed valuations greater than seventy five million dollars, the county commission would consist of five members who

". . . shall serve terms of four years, and after having served two consecutive terms shall be ineligible to hold any county office for four years thereafter."

Section 15-37-2(B), NMSA 1953 Comp. was enacted to provide for five member commissions in accordance with Article X, Section 7. See Laws 1974, Chapter 21.

The question here is whether a county commissioner who has served one term under Article X, Section 2 and a second term under Article X, Section 7 may seek re-election for another term under Article X, Section 7. In construing the applicable provisions of the Constitution, the primary purpose must be to ascertain and effectuate the true intent and object designed to be accomplished by such provisions. **State ex rel. Ward v. Romero**, 17 N.M. 88, 124 P. 649 (1912).

Article X, Section 7 is apparently intended to accommodate the needs of larger counties by increasing the composition of their commissions to five members and the length of the term to four years. It is also the clear intent of Article X, Section 7 to retain a two-term limitation on the number of consecutive terms which may be served by a county commissioner. Although the 1973 amendment to the Constitution changed the **length** of terms for certain county commissioners, the limitation of "two consecutive terms" remains unchanged. The Constitution "interposes a term limit not a time limit," **Koontz v. Kurtzman**, 12 Wash. 59, 40 P. 622, 623 (1895), and it is that term limit which must be honored.

In this case, to give effect to the spirit and intent of the Constitution, under both Article X, Section 2 and Article X, Section 7, it is necessary to limit county commissioners to two full terms, whatever their duration. Compare **Ervin v. Collins**, 85 So.2d 852 (Fla. 1956). To permit a particular county commissioner to serve, unlike anyone else, three consecutive terms is inconsistent with clear constitutional intent. Thus, we conclude, that having served two full consecutive terms, a county commissioner is ineligible to seek re-election for a third term.

## ATTORNEY GENERAL

Toney Anaya, Attorney General

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