

Opinion No. 14-1236

May 21, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Lorenzo Zamora, Estancia, New Mexico.

COUNTY CLERK.

Power of board of county commissioners to fill vacancy in office of county clerk.

OPINION

{*98} I have today received your letter in which you state that on the 30th of April, Acasio Gallegos, County Clerk of Torrance County, submitted his resignation as such clerk and the Board of County Commissioners, of which you are the chairman, accepted the resignation and under the advice of the district attorney the board appointed R. L. Hitt to take charge of the office until the newly appointed clerk would qualify, and it appears that you have since become doubtful as to the propriety of appointing or employing Mr. Hitt temporarily because Section 3782 of the Compiled Laws of 1897 provides that all officers shall continue in office until others are appointed or elected and qualified according to law, and you incline to the opinion that this authorizes Mr. Gallegos to act as clerk until his successor is qualified.

Notwithstanding this general language of the statute, I am of opinion that when you accepted the resignation the office became vacant and Mr. Gallegos no longer had any right to act as clerk. The vacancy was just as complete as it would have been if he had been removed by judgment of the District Court or had been suspended during the pendency of proceedings against him. The intention of the legislature was to provide clearly against any such thing as a vacancy occurring by expiration of a term of office when there was no successor ready to qualify and take charge. Where there is such an absolute vacancy existing, I can see nothing wrong in the appointing power, which, in this case, is the Board of County Commissioners, making temporary provision by employing someone for that purpose for the discharge of the duties of the office.

You further say that you appointed Julian Salas clerk to succeed Mr. Gallegos and after waiting thirteen days you were advised by the District Court that Salas' bond had not been approved and considering that Salas had been given plenty of time within which to qualify and had failed to do so, the board proceeded to revoke his {*99} appointment and appointed Reymundo Romero in his place, and you desire to know if you acted rightly in that revocation and appointment. There is nothing in the statutes as to the length of time within which a clerk appointed to fill a vacancy must give his bond, and I would say that a reasonable time should be given him. Chapter 35 of the Laws of 1901 gives a person, who has been elected to that office, ten days to furnish his bond and that may be taken as a legislative construction of what would be a reasonable time, and

I believe that you acted properly in making the appointment of Mr. Romero and if Mr. Romero has qualified, I believe that you should recognize him and no one else as clerk.