

Opinion No. 16-1783 1/2

April 22, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Mr. J. M. Thomas, Aztec, New Mexico.

Offer of a person seeking nomination for a county office to perform the duties of the office for less than the salary fixed by law is not legitimate.

OPINION

{*355} Your letter of the 17th instant reached me yesterday, but I have not been able sooner to answer. You say that a peculiar political condition has arisen in your county, which is new and puzzling to you and as to which you would like to be set right. You say that you and another citizen are seeking the nomination for a county office on the same party ticket, but that your competitor makes an offer out of the ordinary in politics, and which, if proper {*356} and legitimate, would be applicable to any other officer's salary, so that similar offers might be made by any candidates. His offer is in substance, that he will perform the duties of the office for \$ 550 less than the salary fixed by the statute because he believes that the salary is excessive. In the fourth edition of McGrary on Elections at Section 333, the following language is to be found:

"While it is now well settled that an offer by a candidate for office to discharge the duties for less than the lawful salary or compensation is in the nature of a bribe, and vitiates all the votes influenced by such offer, yet it has been held that the person making the offer is not thereby rendered ineligible to hold the office in the absence of a constitutional or statutory provision declaring such ineligibility."

In the case of *People v. Thornton*, 25 Hun., at pages 465-6, the court speaks as follows:

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"It is strenuously urged by the defendant's counsel that the promises admitted to have been made by the defendant to the electors of the county, that if elected he would perform the duties of the office of county judge for \$ 1,300 less than the sum fixed by law for such services, were not offers or an offer of a bribe within the meaning of the Constitution; that they constituted a pledge merely to correct a subject of just complaint made by the people against what they deemed an oppressive legislative burden upon them; that the promises were made in the interest of a just reform, with no criminal intent. But this argument seems to be borne down by the weight of authority. In view of the numerous cases, both in England and in this country, in which the subject of selling offices and of the bidding for offices has been under discussion, we must hold such promises and pledges as were made by the defendant to the electors of the county in this case to be reprehensible in the extreme, being against public policy, and in fact

criminal, being no less than an offer in the nature of an intended bribe to the electors to whom they were made."

In that case a New York court held that the defendant Thornton was not, by his attempted bribe, disqualified to hold the office, in harmony with the statement made in the quotation from McCrary. We have, however, a statute to be found in Section 2049 of the Codification, which declares that persons described therein shall be deemed guilty of bribery and on conviction, shall be punished by fine and imprisonment "and shall thereafter be disqualified from voting at any election, serving on juries or holding any public office in this state." It might be held that such a wholesale offer as the one now under consideration, would be an offense under the first sub-division of that section, and if so, the person making such an offer might be subject to criminal prosecution and be deprived of the right to hold any public office. This would follow, however, only from the conviction of the offender in a criminal prosecution.

You will understand, of course, that it would be highly improper for me, as Attorney General, to attempt to interfere as to the candidacy of any of our citizens for public office so as to assist one or hurt another, and I have no such desire or intention in this matter, {*357} but seek only to give you and your competitor information as to what the law is. To that end I shall send a copy of this letter to your competitor so that he may be as fully informed as you are, as I must assume that the offer which he has made is not prompted by any improper motive even though the law may denounce it as an offense.