

Opinion No. 16-1832

June 20, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Mr. P. M. Steed, Deming, New Mexico.

Qualifications of voters. Meaning of words "actual residence."

OPINION

{*394} I have this morning received your telegram asking my opinion as to the meaning of "actually resided," as used in Section 3591 of the Codification of the Statutes of New Mexico. You further ask whether I think that the article under "Actual Residence," in Volume 1 of the second series of "Words and Phrases" covers the point.

I have telegraphed you, in substance, that Section 3591 relates only to qualifications of voters at elections of municipal officers, and that at local option elections, such as I am informed your approaching election will be, the qualifications of voters are to be ascertained by reference to Section 1 of Article VII of the Constitution. In addition to this, there is much room to argue that that section of the Constitution, where it varies from said section 3591, must control, and refers only to what is known as legal residence, as distinguished from actual residence, in the authorities cited in "Words and Phrases." You will find substantially the same distinction made under the same title in the first series of the same {*395} work, and I have had occasion again and again to point out that under our constitutional provision a man might have a legal residence and right to vote in one place, although actually residing in another, as in the case of our state officers, who, by the Constitution, are required to reside at the seat of government during their terms of office, and yet they retain their legal residence and right to vote in the counties where they formerly actually lived, if they choose so to do.

You will notice that the constitutional provision says nothing about "actual residence," and evidently means legal residence, and declares that citizens who have certain residence qualifications "shall be qualified to vote at all elections for public officers." This language would include elections of municipal officers to which Section 3591 relates, as they are public officers.

Section 2940, which provides that any municipality may submit to the electors thereof the question of whether or not the sale of intoxicating liquors shall be prohibited, must, therefore, be read in the light of the constitutional provision as to the qualifications of electors. As this sort of an election is not an election for public officers, the legislature might, if it had seen fit to do so, have provided some different qualifications without infringing upon the constitutional provision, but as the legislature did not do so, we are referred to the definition of a voter or elector as stated in the Constitution. It becomes unimportant, then, to consider the exact meaning of the words "actually resided," as

there is nothing equivalent thereto in the constitutional provision. If a man has a legal residence in a city or town, he would have a right to vote on the question of prohibition, although he might have been physically absent from the city for the thirty days preceding the election, and might not have had, during that time, an actual abiding place within the city.

I write this letter in order to make the matter entirely clear, and as the election is not to be held until Saturday, you should receive it in ample time for complete information.