

## Opinion No. 16-1885

October 16, 1916

**BY:** H. S. CLANCY, Assistant Attorney General

**TO:** Honorable Hugh H. Williams, Santa Fe, New Mexico.

**Registration of state officers and employes by election officers.**

### OPINION

{\*431} I am in receipt of your letter of even date in which you state that the board of registration at Deming, in the county of Luna, has refused to place your name upon its books so that you may vote at the election to be held on November 7, basing such refusal upon the alleged fact that you are no longer a resident of Luna County, but now reside in Santa Fe County, and you ask for the opinion of this office as to the legality of the action taken by the board.

This office had occasion on December 24, 1914, to consider a somewhat similar point, and in its published opinions (No. 1402) made use of the following language:

"It is quite impossible to state any comprehensive and accurate definition of what constitutes the required residence so as to be applicable to all possible cases. Residence is largely a matter of intention, although a mere declaration of intention would not be sufficient evidence if inconsistent with other facts. A man may be physically absent from his place of residence without losing his rights as a resident. Under the state constitution, state officers are required during their terms of office, to reside at the state capital and there might be cases where the state officer would retain no place of abode in the county of which he had been a resident and voter and {\*432} yet he would not be held to lose his residence and right to vote in that county if he desired and intended to retain his legal residence there."

While it is true that you, as a member of the State Corporation Commission, are not required by the Constitution to reside at the state capital, yet Sec. 4 of Art. VII of the Constitution most certainly applies to your case, that section providing that no person shall be deemed to have acquired or lost residence by reason of his presence or absence while employed in the service of the State of New Mexico. It, therefore, necessarily follows that if it has been a matter of intention upon your part to retain your residence in Deming, although you have been necessarily absent from that place while attending to your official duties, you are entitled to be registered as a voter in Deming. I will say in passing that this question has never been raised before by any board of registration so far as this office has been informed, and numerous state officers and employes of the state, who are living in Santa Fe, return to their home counties for the purpose of voting.

You also state in your letter that your friend Mr. John Beal is having the same difficulty with the board of registration at Deming; that he is temporarily absent from Deming under employment at Hillsboro, but that he claims that his residence is at Deming. As stated in the opinion heretofore quoted from, residence is largely a matter of intention, and a man may be physically absent from his place of residence, without losing his right to vote.

Should the board of registration differ from the view taken by this office upon the subject, I suggest that you have someone in Deming, who is well acquainted with all of the facts, make the affidavits prescribed by Sec. 1964 of the Codification of 1915, and present the same to the board of registration. It will then become the duty of the board to place the names of yourself and of Mr. Beal upon the registration list. The board would have no alternative. A refusal to do so would make them liable to the penalty prescribed in the last sentence of the section referred to.