

Opinion No. 34-736

March 5, 1934

BY: E. K. NEUMANN, Attorney General

TO: Mr. A. V. Gullette, The Gallup Independent, Gallup, New Mexico.

{*118} Regarding your letter of March 3, 1934, with reference to the qualifications for holding the office of member of the board of trustees of the Town of Gallup.

{*119} There are at least three sections of the 1929 Code which relate to such qualifications. Sections 90-603, 90-2903 and 90-3404. Section 3504 relates only to villages.

Section 90-603 was enacted in 1903, Section 90-2903 was enacted in 1919 and Section 90-3404 was enacted in 1889 and amended in 1905. All except Section 90-2903 were enacted prior to the adoption of the Constitution.

Section 2 of Article VII of the Constitution provides: "Every citizen of the United States who is a legal resident of the state and is a qualified elector therein, shall be qualified to hold any public office in the state except as otherwise provided in the Constitution. * * *"

In Section 13 of Article 5 of the Constitution, we find the following: "All district, county, precinct and **municipal** officers shall be residents of the political subdivision for which they are elected or appointed."

Our Supreme Court, in *Gibbany vs. Ford*, 29 N.M. 621, declared Sec. 90-2903 unconstitutional, for reason, as the court said in its syllabus, "Section 2 of Article 7 of the Constitution gives the right to every person who is a citizen of the United States, a resident of and a qualified elector within this state, to hold any public office, except as otherwise provided in the Constitution. Section 13 of Article 5 requires all district, county, precinct and municipal officers to be residents of the political subdivision for which they were elected or appointed. The Legislature has no power to make added restrictions to such right to hold public office."

As you are aware, Section 90-2903 attempted to require city councilmen or trustees to be residents of the ward from which they were elected.

Now, whether or not the Legislature may also require municipal trustees to be the owners of real property within the municipality has not been decided, but I am inclined to believe this restriction upon the personal eligibility to hold such office unauthorized and the act unconstitutional.

Our Supreme Court, in 29 N.M. 244, while discussing the possibility of a legislative enactment, which required county treasurers to give bond before taking office, being contrary to the Constitutional provisions mentioned, used the following language:

"Counsel also cites Black vs. Trower, 79 Va. 123, but this case has no application, except to emphasize what we have heretofore said. The Legislature had passed an act prescribing that members of electoral boards should be freeholders, which contravened a provision of the Virginia Constitution similar to the one we have been discussing. The court, of course, held the act was unconstitutional for the reason that it superadded to the personal qualifications as to eligibility for office something which the Constitution had not provided for."

In the case quoted from the court pointed out the differences between personal eligibility to be elected to office and qualifications to assume such office.

Under the holding in the two cases cited, I am inclined to the view that any citizen of the United States, a resident of and a qualified elector in this state and a resident of the Town of Gallup is qualified to hold the office of member of the Board of Trustees of the Town of Gallup. Section 90-3404, 1929 Code, is perhaps the best guide of all statutory provisions relating to this matter.