

## Opinion No. 40-3410

January 30, 1940

**BY:** FILO M. SEDILLO, Attorney General

**TO:** Dailey & Rogers, Attorneys at Law, 209 Sunshine Building, Albuquerque, New Mexico. Attention: Mr. Waldo H. Rogers.

{\*134} I am in receipt of your letter of January 24th wherein you say that you have been employed by the Allied Architects of Albuquerque, a corporation of duly licensed and practicing architects in the city, to bring about the removal from office of W. C. Kruger, Secretary of the New Mexico Board of Examiners for Architects.

You say that Section 2 of Chapter 82 of the Session Laws of 1939 prescribes, {\*135} among other qualifications for the holder of the position of member of State Board of Examiners for Architects that the incumbent must have had at least ten years experience in the practice of architecture and shall have been in responsible charge of work for at least five years, and that he shall have been a resident of New Mexico for five years at the time of his appointment and shall be at least thirty-five years of age; that Mr. Kruger has not practiced the profession of architecture for the period above specified, nor has he attained the age of thirty-five years -- thus being incapable of holding the position of member of the State Board of Examiners for Architects and the position of Secretary to said board.

Under Chapter 115, New Mexico Statutes, Annotated, 1929 Compilation, quo warranto proceedings cannot be instituted for the removal of a public officer by a private citizen unless the Attorney General refuses to bring such an action.

Subsection D of Section 2 of Chapter 155 of the Session Laws of 1931, as amended by Subsection D of Section 2 of Chapter 82 of the Session Laws of 1939, reads as follows:

"That, excepting the Board first appointed, the five (5) members of the Board shall each have had at least ten (10) years experience in the practice of architecture and shall have been in responsible charge of work for at least five (5) years. Each member of the Board shall be a citizen of the United States and shall have been a resident of New Mexico for five (5) years at the time of his appointment, and shall be at least thirty-five (35) years of age. The Governor may remove any member of the Board for misconduct, incompetency, or neglect of duty."

It is my understanding that Mr. Kruger and the other members who are serving at present on the New Mexico Board of Examiners for Architects were appointed in 1939 by the Governor of the State of New Mexico under the authority vested in him by Chapter 82 of the Session Laws of 1939.

If you will notice, there is an exception made in said Subsection D, Section 2, in that it makes some exceptions as to the first board named. There is no question that this exception applies to the first board named as far as the qualifications of ten (10) years experience in the practice of architecture is concerned, and also to where said members shall have been in responsible charge of work for at least five (5) years.

There is some question as to whether or not said exception applies to the rest of the qualifications in Subsection D. In case said exception does not apply to the rest of the subsection then we must look into the qualifications as set up. There is no question that Mr. Kruger is a citizen of the United States and that he had been a resident of New Mexico for five years at the time of his appointment. The only question which remains to be answered is with regards to the age qualification. Quo warranto proceedings against Mr. Kruger can be based only on this qualification, if any.

Section 2 of Article VII of the Constitution of New Mexico provides as follows:

"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 this Constitution."

Mr. Kruger being a legal resident of the state and a qualified elector may hold a public office in this state except as otherwise provided in the constitution. With regards to the position in question I fail to find any other provision in the constitution.

In Board of Commissioners of Guadalupe County vs. District Court, 29 N.M. 244, the court held that with regards to Article VII, Section 2, which is above quoted, that it relates generally to the elective franchise and right to hold office; that it is concerned entirely with the definition of the personal qualifications and characteristics of persons who may vote, hold office and sit as jurors.

In Gibbany vs. Food Mayor, et al., 29 N.M. 621, with regards to said Section 2 of Article VII of the New Mexico Constitution, the court held that the legislature has no power to make added restrictions to such right to hold public office.

Regardless of the foregoing decisions, it <sup>{\*136}</sup> is not my desire at this time to pass upon the constitutionality of the age provision, which, in reality, is a personal qualification and which is mentioned in Subsection D, Section 2 of Chapter 82 of the Session Laws of 1939.

Mr. W. C. Kruger has been a member of the State Board of Examiners for Architects for several years. The administrative department apparently has been satisfied as to his qualifications to hold said office. This being the case, and due to the foregoing which I have outlined, I do not feel inclined to institute quo warranto proceedings for the removal of Mr. Kruger as a member of the State Board of Examiners for Architects.