

Opinion No. 46-4849

February 4, 1946

BY: C. C. McCULLOH, Attorney General

TO: Mr. G. T. Watts District Attorney Roswell, New Mexico

{*183} We are in receipt of your letter of January 30, 1946, in which you ask two questions:

Your first question is what fees, if any, jurors in Justice of the Peace Court are entitled to receive in Civil actions.

I have examined the statutes with care, and find no provision whatsoever for the payment of fees to jurors in attending a jury of the Justice of the Peace Court in a Civil action.

Sections 19-814 and 30-137 of the 1941 Compilation are limited to District Court Juries, not only because the context of these sections can be applicable only to such juries, but also because the titles of these acts were limited to District Court Juries.

Section 19-101 (38), is one of the Supreme Court rules of procedure in District Courts.

Section 38-517, providing for juries in Justice of the Peace Courts, makes no provision for a fee.

In view of the foregoing, it is my opinion that juries in civil proceedings before a Justice of the Peace are not entitled to fees or allowance for expenses.

By your second question you ask whether or not a Justice of the Peace can serve on the County Election Board of Registration.

Section 56-211, setting out the qualifications of members of the Registration Board, provides only that they be qualified electors in the County, able to read and write legibly, and otherwise competent to perform the duties required.

Section 56-316 is as follows:

"No person shall be appointed as a judge of election or counting judge, clerk of election, or counting clerk, who is related by blood or marriage within the first degree to any candidate to be voted for at such election.

"No person shall be appointed as an election judge or as a counting judge who can not read, and no person shall be appointed as an election clerk or as a counting clerk, who can not read, and write legibly.

"No member of any board of education, school superintendent, teacher, or other employee of any school district, or sheriff, deputy sheriff, constable, policeman, marshal, deputy marshal, state policeman, or state motor patrolman, shall serve upon any board of registration, or as election judge, or clerk, or counting judge or clerk, or as a challenger in any election.

{*184} "All election officials, including challengers and watchers, shall be legal residents of the precinct wherein the election at which they serve is held."

The third paragraph, prohibiting certain persons from serving as members of the Board of Registration, does not prohibit Justices of the Peace from accepting such office. This is the only clause in the section covering Boards of Registration. Further, this clause does not prohibit a candidate or relation of the candidates from serving as a member of the Registration Board. Further, it does not appear to me that there is any incompatibility between the office of Justice of the Peace and member of the Registration Board, since there is no conflict in the respective duties.

In view of the foregoing, it is my opinion that a Justice of the Peace may serve as a member of the Board of Registration, and that a Justice of the Peace would not be disqualified from holding such office, even though he contemplates being a candidate in the ensuing election.

By ROBERT W. WARD,

Asst. Atty. General