

## Opinion No. 46-4890

April 16, 1946

**BY:** C. C. McCULLOH, Attorney General

**TO:** John W. Green Town Clerk Lovington, New Mexico

{\*218} We are in receipt of your letter of April 11, 1946 in which you state that Mr. L. L. Beadle was elected as trustee of the Town of Lovington {\*219} at the last town election; that while Mr. Beadle has lived in Lea County many years and within the corporate limits of Lovington for more than one year, that he did not transfer his registration to Lovington until less than 30 days preceding the municipal election.

In view of this situation, you state that the assistant district attorney, Mr. A. D. Williams, has requested you to write us for an opinion as to whether Mr. Beadle is entitled to hold office as trustee.

Under the circumstances outlined by you, Mr. Beadle would not be entitled to vote under section 56-215 of the 1941 Compilation, as amended, and by section 56-217 as he transferred his registration less than 30 days preceding the municipal election.

The question thus presented is whether a qualified elector who was not entitled to vote because he transferred his registration less than 30 days prior to the election may nevertheless be qualified to hold public office and be elected to office at such election.

In answering this question, I will not consider the primary law as it has no application to a municipal election.

Article 7, Section 2 of the New Mexico Constitution establishes the qualifications necessary to hold public office. These qualifications are:

"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."

Thus, the sole limitations placed upon the right to hold public office are that he be a citizen, a resident and a qualified elector.

In the case of *Gibbany v. Ford*, 29 N.M. 621, 225 Pac. 577, the court held that the Legislature could not add to the qualifications set forth in the Constitution. Article 7, Section 1 of the Constitution defines "qualified elector" as follows:

"Every male citizen of the United States who is over the age of 21 years and has resided in New Mexico 12 months, in the county 90 days, and in the precinct in which

he offers to vote 30 days next preceding the election \* \* \* shall be qualified to vote at all elections for public officers."

In authorizing the Legislature to require registration as a prerequisite to voting, this section provides:

"The Legislature shall have the power to require the registration of the **qualified electors** as a requisite for voting."

Thus, it is seen that registration is not made a condition precedent to the person being a qualified elector. Rather, this section authorizes the Legislature to make registration a condition precedent to the right of a qualified elector to vote.

I do not find that our court has ever passed directly on this question. However, in the case of Chase v. Lujan, 48 N.M. 261, 149 Pac. 2d 1003, the court recognized that there was a distinction between the phrase "qualified elector" and "qualified to vote" or "entitled to vote." At page 271 the court said:

"Caution should be exercised not to confuse the phrase 'qualified elector' as popularly understood, with the phrase 'qualified to vote' or 'entitled to vote'. For instance, Sec. 2 of Art. 7 says that 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. Manifestly, 'qualified elector' as there employed, is not dependent upon whether the elector has exercised the right of elective franchise or not. Looking at the matter realistically, {\*220} however, one may have all of the other qualifications of an elector and yet if he does not appear in person in the precinct of his residence on election day and offer to vote, he has failed to fulfill one of the conditions necessary to entitle him to vote."

In view of the foregoing, it is my opinion that Mr. Beadle, if otherwise qualified, is entitled to hold the office of town trustee, even though he was not entitled to vote because of his failure to change his registration within the time prescribed.

By ROBERT W. WARD,

Asst. Atty. General