

## Opinion No. 46-4966

November 21, 1946

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

**TO:** Mr. Fred J. Federici District Attorney Raton, New Mexico

{\*285} This is to acknowledge receipt of your letter of November 18, 1946, wherein you request the opinion of this office on the following question: May a person owning land within an irrigation district be elected as an officer thereof, notwithstanding the fact that the person in question does not actually reside within the district?

Section 77-2104 of the N.M. 1941 Compilation provides that the Board of County Commissioners may receive petitions for purposes of establishing an irrigation district, and further provides, in part, as follows:

"Thereupon the said Commissioners shall, by further order, \* \* \* provide that a **qualified elector** of each said three divisions **shall be elected as a member of the Board of Directors** of said district by the qualified electors of the whole district." (Emphasis supplied).

Section 77-2105 of the N.M. 1941 Compilation defines qualified electors as follows:

{\*286} "At said election, **and all elections held under the provisions of this act**, all owners of land within such district, who are citizens of the United States over twenty-one years of age \* \* \* shall be qualified electors."

Section 77-2107 of the N.M. 1941 Compilation provides for holding second and subsequent elections, but makes no provision as to the residence requirements or qualifications as to prospective office holders in said irrigation district.

At first glance, Sections 77-2104 and 77-2105 seem to apply only to the original establishment of an irrigation district, and to the original election of a Board of Directors for such district. It should be noted, however that Section 77-2105, above, provides that: "The said election **and all elections held under the provisions of this act**," which wording appears to make that section applicable to **all elections**, whether it be the original one or a second and subsequent one.

In order to qualify for office in an irrigation district, the only requirement which the law provides is that he be a qualified elector, and a qualified elector, as defined by Section 77-2105, is any person who owns land within a district, etc. No mention is made as to residence within the irrigation district.

In view of the above, it is my opinion that a person owning land within an irrigation district may be elected as an officer thereof, notwithstanding the fact that the person in question does not actually reside within the district.

By ROBERT V. WOLLARD,

Asst. Atty. General