

Opinion No. 53-5817

September 24, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable Edwin L. Mechem Governor State of New Mexico Santa Fe, New Mexico

{*225} In your letter of August 24, 1953, you ask our opinion as to whether the Primary Election Proclamation to be issued by you in February, 1954, should call for the nomination of Judges for Division 3 of the Second Judicial District; Division 2 of the Fifth Judicial District; and for a Judge of the Tenth Judicial District.

Division 3 of the Second Judicial District was created by Chapter 31 of the Laws of 1949. Section 2 of Chapter 31, Laws 1949 provides as follows:

"The additional district judge for the second judicial district of the State of New Mexico, provided by this Act to be known as the judge of Division 3 shall be appointed by the Governor of New Mexico upon the passage and approval of this Act, and he shall serve as one of the District Judges of said District until the next general election at which his successor shall be elected in the same manner as is provided by law for all other district judges of this State."

Under this provision a Judge was appointed to serve until the 1950 general election at which time a Judge was elected. The Primary Election Proclamation issued by the Governor in 1950 provided for the {*226} election of such Judge for a term of six years.

By Chapter 43 of the Laws of 1949, the Judge of Division 2 of the Fifth Judicial District was created. Insofar as is material to this opinion, Section 2 of Chapter 43 is identical with Section 2 of Chapter 31 above quoted.

The Primary Election Proclamation of the Governor in 1950 likewise provided for the election of a Judge of the Second Division of the Fifth Judicial District for a term of six years.

The Tenth Judicial District was created by Chapter 177 of the Laws of 1951. Section 3 of that Act provides as follows:

"That the Governor of the State of New Mexico upon approval and passage of this act shall appoint a District Judge and a District Attorney for the Tenth Judicial District, such appointed officials to act in those capacities until their successors are duly elected and qualified at the next general election, for their respective offices."

Pursuant to that Act, a District Judge was appointed and served until the 1952 General Election when his successor was elected and qualified. The Primary Election

Proclamation likewise, at the 1952 Primary provided for the election of a Judge of the Tenth Judicial District for a term of six years.

With respect to the additional Judges in the Second and Fifth Judicial Districts, the two appointees were required to run for office at the next General Election. At that time their successors were " * * * elected in the same manner as is provided by law for all other District Judges," limited the terms of these additional Judges to a four year term which would expire at the same time as the other District Judges in the State.

Article 6, Section 12 of the New Mexico Constitution provides as follows:

"The state shall be divided into eight judicial districts and a judge shall be chosen for each district by the qualified electors thereof **at the election for representatives in Congress**. The terms of office of the district judges shall be six years." (Emphasis ours)

The above quoted Section of the Constitution limits the manner of election of District Judges to an election at a time when representatives in Congress are being elected. The 1950 election at which these offices were filled was an election for representatives in Congress, and both Judges having been elected at such time were elected "in the same manner as provided by law for all other District Judges" within the meaning of Section 2, Chapter 31 and Section 2, Chapter 43, Laws of 1949. The above quoted Section of the Constitution also states that the term of office of a District Judge is six years, and once such Judge has been elected at an election for representatives in Congress, that is the term for which he has been elected. It is therefore our opinion that the Primary Election Proclamation should not contain any provision for the election of Judges from the Second Division of the Fifth Judicial District and the Third Division of the Second Judicial District.

With respect to the office of Judge of the Tenth Judicial District, the authority under which the office was created is Article 6, Section 16, of the Constitution of New Mexico, which provides in part:

{*227} " * * * that at the first session after each United States census thereafter, the legislature may rearrange the districts of the state, increase the number thereof, and make provision for a district judge for any additional district."

We feel that under the Legislature's power to "make provision for a District Judge" the Legislature could have set the original term of the first elected Judge in the Tenth Judicial District to expire at the same time as the term of the Judges originally provided for in the Constitution. We feel however that the Legislature did not do this, and by the use of the words "until their successors are duly elected and qualified at the next General Election" the Legislature intended and provided that the District Judge of the Tenth Judicial District was to be elected for a term of six years commencing January 1, 1953.

It is therefore our opinion that the Primary Election Proclamation should not contain any provision for the election of a Judge of the Tenth Judicial District.

By: Walter R. Kegel

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