

Opinion No. 55-6238

July 26, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable Richard F. Rowley, District Attorney, Ninth Judicial District, Clovis, New Mexico

We have your request for an opinion dated June 28th in which you ask the following question:

Can a person who received one write-in vote for the office of Justice of the Peace at the General Election in 1954, who failed to take any action to qualify, now fulfill the requirements of Sections 36-1-3 and 36-1-4, N.M.S.A., 1953, and thus qualify to serve as Justice of the Peace for the precinct for which he was elected?

Section 36-1-6, N.M.S.A., 1953, reads as follows:

"Every justice of the peace who shall fail to execute and file the bond, as required in this article, shall be, by such failure, deemed and held to have resigned his office, or to have refused to serve therein, and the office shall be, by such failure ipso facto vacant; and the said office shall be filled by election or appointment, as required by law."

It is to be noted that these particular sections (36-1-3 and 36-1-4, N.M.S.A., 1953) do not provide the time within which a Justice of the Peace shall take the steps therein outlined. In **State ex rel Webb vs. Stratten**, 83 Minn. 194, 86 N.W. 20, the Court held that when the statute did not provide the time within which the bond and oath must be filed, that the party required to file said bond and oath had a reasonable time within which to file such bond and oath.

"Reasonable time is defined to be so much time as is necessary under the circumstances to do conveniently what the contract or duty requires should be done in a particular case. *Bowen v. Detroit City Ry. Co.*, 20 N.W. 559, 562, 53 Mich. 496, 501, 52 Am. Ry. 822."

The filing of an oath and a bond would not require the elapse of seven months. We feel that there has been an unreasonable delay in following the provisions required by Sections 36-1-3 and 36-1-4, N.M.S.A., 1953, and thus, there can not be a qualification for this office at this time. We are of the opinion that the provisions of Section 36-1-6 above quoted apply to this case.

By: Paul L. Billhymer

Assistant Attorney General