

Opinion No. 56-6358

January 18, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Judge J. V. Coan, Small Claims Court, Bernalillo County Court House,
Albuquerque, New Mexico

We have your letter of December 20th in which you request an opinion from this office as to whether the Office of Judge of the Small Claims Court must stand for election in the 1956 Election.

Section 16-5-3, N.M.S.A., 1953, provides:

". . . He shall hold such office for a term of four (4) years from the first of January next following his election until his successor is elected and qualified and he shall not be eligible for reelection to succeeding terms . . ."

This presents the question as to whether the Legislature was authorized to create an office of Judge of Small Claims Court whose term of office is for a period of time greater than two years in view of Article X, Section 2 of the Constitution of New Mexico which reads as follows:

"All county officers shall be elected for a term of two years . . ."

Article VI, Section 1 of the New Mexico Constitution, reads as follows:

"The judicial power of the state shall be vested in the senate when sitting as a court of impeachment, a Supreme Court, district courts, probate courts, justices of the peace, and such courts inferior to the district courts as may be established by law from time to time in any county or municipality of the state, including juvenile courts."

This was the authority for the creation of the Small Claims Court by the Legislature. See Stout vs. Clovis, 37 N.M. 30, 16 P. 2d 936. This would seem to grant the Legislature the authority to do everything necessary to create any "court inferior to the district court," including fixing the method of selection of the judge and the tenure of the office unless Article X, Section 2 of the Constitution is construed to be a restriction upon the Legislature as to the fixing of the tenure of this office.

We are of the opinion that Article X, Section 2 does limit the Legislature's power to create the term of office of Judge of Small Claims Court. When the Legislature chose to create a county officer of the Small Claims Judge, we are of the opinion that Article X, Section 2 of the New Mexico Constitution limited the length of term of such officer. This office has ruled in Opinion No. 6123 dated March 9, 1955, that the Small Claims Judge

is a County Officer. It is to be noted that prior to November 3, 1914, Article X, Section 2 read as follows:

"All county officers shall be elected for a term of four years and no county officer, **except the county clerk and probate judge** shall, after having served one full term be eligible to hold any county office for four years thereafter." (Emphasis Ours.)

The elimination of the exception would indicate that this section of the Constitution as amended, is to apply to all officers of the county, and the people in placing the section in its present form intended that all county officers should be elected and hold office under the terms of this provision.

We are of the opinion that the provision of § 16-5-3, N.M.S.A., 1953, above quoted comes within the statement made In re Gibson, 35 N.M. 550:

"The invalidity of a portion of a legislative enactment will not annul other valid portions unless the valid and invalid portions are so interdependent that it can reasonably be said the Legislature would not have enacted the one without the other."

In other words, we are of the opinion that this part can be separated from the other part of the statute and remaining portion will remain in full force and effect.

It is therefore the opinion of this office that the Judge of Small Claims Court must stand for election every two years as other county officers.

By: Paul L. Billhymer

Asst. Atty. Gen.