

Opinion No. 56-6534

October 29, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable Tom O. Montoya, State Senator, Pena Blanca, New Mexico

Receipt is acknowledged of your letter dated October 24, 1956, in which you request an opinion on the following question:

"Can a son-in-law or brother-in-law of a candidate serve as an election official?"

The pertinent part of § 3-3-16, N.M.S.A., 1953 Comp., reads as follows:

"No person shall be appointed as a judge of election or counting judge, clerk of election, or counting clerk, who is related by blood or marriage within the first degree to any candidate to be voted for at such election."

§ 29-1-2, N.M.S.A., 1953 Comp., provides as follows:

"Relationship in the direct line, counted from fathers to sons and remoter descendants, shall be computed by the number of persons begotten, and these are degrees not counting the trunk; for example, the father is the trunk, the son is the first degree, the grandson the second degree, the second grandson the third degree, the third grandson the fourth degree, the fourth grandson the fifth degree, the fifth grandson the sixth degree, and so on with the rest, and these are called descendants. But from this point, counting upwards they are called ascendants, so the last is called son, in respect to his predecessor, and such predecessor is called father, and going upward, the one (1) that comes next in order is grandfather, second grandfather, third grandfather, fourth grandfather."

§ 29-1-3, N.M.S.A., 1953 Comp., provides as follows:

"Relationship in the collateral line in its computation is reckoned by the number of persons begotten, not counting the trunk, to which they are referred as having descended from it, but which are separate laterally, as branches pendant from that trunk; for example, brothers are of the second degree, because they are two (2) persons, begotten by and descended from the same trunk, or, if the number of brothers be greater, the comparison is always one (1) with another; the sons of these are of the fourth degree, as being four (4) persons separate from each other, but from the same trunk, those that follow are of the sixth degree, and the next of the eighth degree. Therefore, counting in even series, as has been shown, they go on increasing two (2) by two (2) ad infinitum, and this is the regular collateral line. But if, for example, one (1) of the second degree, be considered in reference to one (1) of the fourth degree, this will be the irregular collateral line."

§ 29-1-4, N.M.S.A., 1953 Comp., provides as follows:

"The relation of affinity is contracted by the union of man and woman in the bonds destined for the propagation of the species, and its computation is in the same order as the relation of consanguinity in respect to the direct line, in descendants and ascendants, and in respect to the collateral line; and it extends only to the eighth degree of civil computation, if the union be by legitimate matrimony, and to the fourth, if the union be without matrimony, it being observed that the man and woman only, who contracted the union, are individually connected by affinity, with the blood relations of the other party, and those blood relations are connected by affinity with the consort of their blood parent; and this relationship shall only be valid for the civil purposes which may be explained in the laws and acts of individuals of the human race."

A son-in-law is just like a son in the direct line and since relationship to candidate is by affinity, computation is in the same order as in the relationship of consanguinity in respect to the direct line. Therefore, a son-in-law cannot serve as an election official.

A brother-in-law is not related to the candidate in the first degree. He is related to the candidate within the second degree and this relationship is computed in the same order as the relation of consanguinity to the direct line, in descendants and ascendants, and in respect to the collateral line.

In view of the wording of the above statutes on how relationship is computed, it is the opinion of this office that a son-in-law of candidate cannot serve as an election official, but a brother-in-law of a candidate can serve as an election official.

Trusting that this fully answers your inquiries, I remain

By Hilario Rubio

Assistant Attorney General