

Opinion No. 58-45

March 4, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Hilario Rubio, Assistant Attorney General

TO: Honorable Natalie Smith Buck, Secretary of State, Santa Fe, New Mexico

QUESTION

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1. Where it appears that the classification of a county is to be increased, shall primary candidates for county offices be charged filing fees on the basis of present salaries of the offices they seek, or on the basis of the greater salaries such positions will carry when the county classification is changed?
2. Where such classification change is effected, can a re-elected county official be paid the higher salary of his office after re-election.

CONCLUSIONS

1. The answer to your first question is that amount of filing fee shall be set or based on the basis of present salaries of county officials and not on anticipated increases.
2. The answer to your second question is in the affirmative for the reason that after the classification has been set and the change in salaries is effected, a reelected county official can be paid the higher salary under said classification after his re-election.

OPINION

ANALYSIS

Section 1 of Art. X of our Constitution of New Mexico provides as follows:

"The legislature shall at its first session classify the counties and fix salaries for all county officers, which shall also apply to those elected at the first election under this Constitution. And no county officer shall receive to his own use any fees or emoluments other than the annual salary provided by law, and all fees earned by any officer shall be by him collected and paid into the treasury of the county."

Sec. 15-43-1, NMSA, 1953 Comp., (Pocket Supplement), provides how the counties shall be classified and reads as follows:

"For the purpose of fixing salaries of county officers, the several counties of the state except sixth class counties are hereby classified as follows: Those having in the year 1952, a final, full assessed valuation of over twenty million dollars (\$ 20,000,000) and having a population of one hundred thousand (100,000) persons or more as determined by the last official United States census, as class 'A' counties.

Those having in said year a final full assessed valuation of over fourteen million dollars (\$ 14,000,000) as counties of the first class.

Those having in said year a final full assessed valuation of eight and one-fourth million dollars (\$ 8,250,000), and under fourteen million dollars (\$ 14,000,000), as counties of the second class.

Those having in said year a final full assessed valuation of six and one-half million dollars (\$ 6,500,000), and under eight and one-fourth million dollars (\$ 8,250,000), as counties of the third class. Those having in said year a final full assessed valuation of four and three-fourths million dollars (\$ 4,750,000), and under six and one-half million dollars (\$ 6,500,000) as counties of the fourth class.

Those having said year a final full assessed valuation of less than four and three-fourths million dollars (\$ 4,750,000), as counties of the fifth class.

The assessed valuation for said year, 1952, shall be the full valuation as finally fixed for said year."

Sec. 3-11-45, NMSA, 1953 Comp., provides as follows:

"Such declarations to be entitled to be filed shall be accompanied by a fee of three per cent (3%) **of the first year's salary of the office sought by the person filing the declaration.** . ." (Emphasis ours)

From the reading of the above constitutional provision and the statute also quoted hereinbefore, it is very clear that primary candidates for county offices shall be charged filing fees on the basis of their present salaries and not on the basis of what a future classification of a county office might bring. In other words, what determines the amount of the filing fee is the amount of salary carried by the county office at the time a candidate files for office and not what he might get in the future by a reclassification which might happen and which might not.

Since a reclassification has been effected, a re-elected county officer can be paid the higher salary after his re-election and the increase does not do violence to the constitutional provision, same being Sec. 27, Art. IV, of the New Mexico Constitution, which provides as follows:

No law shall be enacted giving any extra compensation to any public officer, servant, agent or contractor after services are rendered or contract made; nor shall the

compensation of any officer be increased or diminished during his term of office except as otherwise provided in this Constitution."

It is plain after the reclassification is made that a county official is not getting additional compensation as he has new duties and, as a matter of fact, is a new officer under the new classification and as is stated in 139 A.L.R. 742 which reads as follows:

"Where a statute enacted prior to the election or appointment of a public officer fixes the compensation of such officer upon the basis of population or valuation of taxable property, there is a conflict of authority as to whether an automatic increase or decrease in compensation during the officer's term by reason of a change in the population or assessed valuation after his election or appointment violates a constitutional provision that the compensation of a public officer should not be increased or diminished during his term.

In a majority of jurisdictions in which the question has been considered, it is held that such an increase or decrease brought about solely because of a change in the population or assessed valuation does not violate the constitutional inhibition."

See other cases in same annotation beginning at page 742.

Inasmuch as the official who is the subject of your second inquiry is an incumbent to the office that he or she seeks, the above quoted reasoning would apply.