

Opinion No. 60-03

January 13, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. W. R. Kegel District Attorney First Judicial District County Court House Santa Fe, New Mexico

QUESTION

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Must a candidate for each Department of the Office of District Attorney of the First Judicial District be a candidate for election throughout all the counties within the district or only in those respective counties which they are designated by Chapter 258, Laws of 1959, to represent?

CONCLUSION

A candidate for the office of District Attorney must run in all the counties of the district.

OPINION

{*336} **ANALYSIS**

The constitutional and statutory provisions pertinent to the question you have raised are:

Article VI, § 24 of the Constitution of New Mexico, which reads as follows:

"There shall be a district attorney for each judicial district, who shall be learned in the law, and who shall have been a resident of New Mexico for three years next prior to his election, shall be the law officer of the state and of the counties within his district, shall be elected for a term of four years, and shall perform such duties and receive such salary as may be prescribed by law.

The legislature shall have the power to provide for the election of additional district attorneys in any judicial district and to designate the counties therein for which the district attorneys shall serve; but no district attorney shall be elected for any district of which he is not a resident."

Chapter 258 of the laws of 1959 provides, in part, as follows:

"Section 2. . . . 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 attorneys of this state."

It is our opinion that in response to the question at hand the key phraseology employed by the constitutional draftsmen is the language of the second paragraph wherein it is provided that "The legislature shall have the power to provide for the election of additional district attorneys in any judicial district and to designate the counties therein for which the district attorneys shall serve".

We recognize that the Legislature in Chapter 258 designated the counties within the district which each of the district attorneys should serve. However, we feel that the Legislature was powerless to define or limit the electorate of the district eligible to vote on such district attorneys in view of the language within the constitutional provision. Specifically, your attention is directed to the use of the term "district" both in reference to attorneys and the judicial area. Section 25 of Article VI of the Constitution designates and therefore defines the meaning of the words "judicial district."

Attention is further directed to the clause of Section 2 which we have above quoted. This language is in keeping with the constitutional mandate when it provides that the additional district attorney shall be elected in the same manner as is provided by law for all other district attorneys of the State. An examination of the election {337} procedures makes it selfevident that all other district attorneys within the State run for office throughout the district which they are to serve.

As was said by the New Mexico Supreme Court, speaking through Roberts, C. J., in the case of **Ward v. Romero**, 17 N.M. 88, 91:

"He [district attorney] is elected by the voters of each judicial district, comprising from two to four counties, and there is no language used in the constitution evincing any intention on the part of the constitutional convention to classify or designate a district attorney as a county official."

To paraphrase, there is no language used in the Constitution evincing any intention on the part of the Constitutional Convention to permit a district attorney to be elected by any group of voters more than or less than the district electorate of the district in which he is to serve.

Therefore, it is our conclusion that a candidate for election to the office of District Attorney either in Department 1 or Department 2 must be a candidate in all the counties composing the First Judicial District.

By: Thomas O. Olson

Assistant Attorney General