

Opinion No. 60-205

October 27, 1960

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

TO: Honorable T. E. Lusk State Senator Eddy County Carlsbad, New Mexico

QUESTION

QUESTIONS

1. If Senate Joint Resolution No. 2 designated as Constitutional Amended No. 5 in in the Laws of 1959 is adopted by vote of the electorate at the general election to be held November 8, 1960, will the executive officers elected be elected for a term of two years or a term of four years?

2. If an executive officer as identified in the amendment serves a two-year term beginning January 1, 1961, will the fact that he will have served four years prevent his running for reelection to the same or any other executive post as therein identified in the general election of 1962?

CONCLUSIONS

1. Two years.

2. No.

OPINION

{*617} ANALYSIS

We have been unable to find any precise authority treating with the above question. However, in responding thereto, we believe that certain general principles of constitutional law are applicable. Our Supreme Court had occasion to say in **Flaska v. State**, 51 N.M. 13, 18, 177 P. 2d 174, as follows:

{*618} "If the language used in the provisions in question is plain and defined and free from ambiguity, when taken in its plain and ordinary sense, there is no occasion for construction of it."

Similarly, the Supreme Court of the United States in **U.S. v. Sprague**, 282 U.S. 716, 731, 75 L. Ed. 640:

"The Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning; where

the intention is clear there is no room for construction and no excuse for interpolation or addition."

Applying the above general principles to the proposed amendment, we believe that the answers to your questions become obvious.

In answer to your first question, second paragraph of Section 2 of the proposed amendment is pertinent. It reads as follows:

"Elective state executive officials shall be elected for four-year terms **at the first general election following the adoption of this amendment** and at the general election every four years thereafter. Prior to the first general election **following the adoption of this amendment**, elective state executive officers shall serve terms of two years." (Emphasis supplied.)

There are said to be three occurrences or events upon which a constitutional amendment becomes effective in the absence of specific language prescribing the date the amendment is to take effect. The first of these is following the Governor's proclamation as to the adoption of a constitutional amendment. The second is following the canvass of the vote and, lastly, following the closing of the polls on election day. See 11 Am. Jur. Constitutional Law, Sec. 38. Of course, each of these assumes a favorable vote on the proposed constitutional amendment. We believe that in responding to your questions, it is unnecessary to determine which of these rules is followed in New Mexico since the earliest that the constitutional amendment could become effective is upon the closing of the polls on election day. Applying this rule to the clear and unambiguous language of the proposed amendment, it becomes obvious that the first general election following the adoption of this amendment would be that to be held two years hence and, therefore, the amended term of office will become effective after that election. It follows that our answer to your first question is that those executive officers elected on November 8, 1960 and described in the proposed Constitutional Amendment No. 5 will be elected for the term prescribed in Art. V, Sec. 1, of our Constitution as it now exists, that is, for a term of two years.

In responding to your second question, Subsection B of Section 1 of the proposed amendment is pertinent. It reads as follows:

"Such officers shall, **after having served two consecutive 4-year terms**, be ineligible to hold any state office for four years thereafter." (Emphasis supplied).

Again applying the above enunciated principles, the answer appears obvious to this office. Subsection B, if adopted in substitution for the existing second paragraph of Section 1, Article V, will provide the only limitation upon eligibility insofar as prior terms of office are concerned. This amendment clearly states that this limitation applies only "after having served two consecutive 4-year terms". Current executive office holders are not now serving 4-year terms and would not fall within the words of limitation and, therefore, Subsection B would not be applicable. Therefore, our conclusion is that if

Constitutional Amendment No. 5 is adopted, current executive office {*619} holders as therein described will not be ineligible to run for an additional term or terms of four years at the general election to be held in November, 1962, and following because of current service in the executive department.

By: Thomas O. Olson

First Assistant Attorney General