

## Opinion No. 60-47

March 15, 1960

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

**TO:** Mr. John A. Anderson City Attorney Lordsburg, New Mexico

### QUESTION

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Under Sec. 14-14-5, N.M.S.A., 1953 Comp., may the only justice of the peace in Hidalgo County assist the county clerk in determining the results of the municipal election when the mayor is a candidate for re-election and the justice of the peace is candidate for city police judge?

#### CONCLUSION

Yes.

### OPINION

#### {\*401} ANALYSIS

The section to which you refer reads in part as follows:

"The returns of all municipal elections shall be made to the clerk of the corporation and shall be opened by him on the third day after the election. He shall call to his assistance the mayor of the corporation, or if the mayor shall have been a candidate at such election, then any justice of the peace of the county. . . ."

It will be noted from this section that the clerk shall be assisted by the mayor except when the mayor was a candidate in the election. If such is the case, then the clerk shall ask the assistance of any justice of the peace in the county. You have stated that there is only one justice of the peace in Hidalgo County. Such being the case, this justice of the peace shall be asked to assist the clerk in determining the results of the {\*402} election. While it may seem illogical for a person to assist in determining the result of an election in which he was a candidate, the statute does not make any provision for disqualifying the justice of the peace because he was a candidate in the election. We feel constrained, therefore, to hold that while the only justice of the peace in the county is a candidate in the election, under the provision of 14-14-5, supra, he must be chosen by the municipal clerk to assist in determining the result of the municipal election. The statute so provides and we are not in a position to change the statute since our sole province is to construe it.

It should be noted, however, that by following the provisions of Sec. 3-6-3, two or more candidates may by petition provide for watchers while the counting and tallying is taking place.

By: Boston E. Witt Assistant Attorney General