

Opinion No. 61-06

January 11, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Norman S. Thayer, Assistant Attorney General

TO: Mr. Willard E. Lewis, Jr., Chief, Local Government Division, Department of Finance & Administration, State Capitol, Santa Fe, New Mexico

QUESTION

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1. Must a person filing for the office of City Commissioner in a City of over 10,000 reside in the district for which he is running?
2. Must he own real estate in the district?
3. May two or more City Commissioners reside in the same district, but represent different districts?
4. Does Section 14-11-6, N.M.S.A., 1953 Compilation, apply to cities of over 10,000 population?

CONCLUSIONS

1. No.
2. No.
3. Yes.
4. No.

OPINION

ANALYSIS

Article V, Section 13, Constitution of New Mexico, as adopted by the people at the general election held on November 8, 1960, provides:

"All district, county, precinct and municipal officers, shall be residents of the political subdivisions for which they are elected or appointed. The legislature is authorized to enact laws permitting division of counties of this state into county commission districts.

The legislature may in its discretion provide that elective county commissioners reside in their respective county commission districts."

Article VII, Section 2, Constitution of New Mexico provides in part:

"Every citizen of the United States who is a legal resident of the state and is a qualified elector therein shall be qualified to hold any public office in the state except as otherwise provided in the constitution"

These are the only constitutional qualifications on the right to hold public office in New Mexico, and it is settled that the legislature has no power to add to these qualifications. **Gibbany v. Ford**, 29 New Mexico, 618-225 Pac., 577 (1924).

Therefore, it is our opinion that despite the provisions of Section 14-11-6, N.M.S.A., 1953 Comp., persons filing for the office of City Commissioner in a city of over 10,000 need not reside in the district for which they are running, nor are they required to own real estate. It also follows that two or more commissioners can reside in the same district although they represent different districts, so long as they reside within the municipality where they are commissioners.

In answer to your fourth question, since Section 14-11-6, supra, was included in Chapter 21, Laws of 1921, which dealt only with cities having populations between 3,000 and 10,000, it is our opinion that that section does not apply to cities having populations in excess of 10,000. Be that as it may, since we are of opinion that the requirements of Section 14-11-6, supra, are unconstitutional requirements, it makes no difference whether that section applies to cities of more than 10,000, or not. For a discussion of the vacancy provisions of Section 14-11-6, see Attorney General's Opinion No. 57-126, June 11, 1957.