

Opinion No. 62-120

September 28, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General J. E. Gallegos, Assistant Attorney General

TO: K. K. Miller, Chief, New Mexico State Police, Santa Fe, New Mexico

QUESTION

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1. Can one who is otherwise fully qualified be appointed as a member of the New Mexico State Police although his two years of residency did not occur immediately prior to the time of appointment?
2. Can such a person be accepted by the State Police as a candidate to attend the recruit training school?

CONCLUSIONS

1. No.
2. Yes.

OPINION

ANALYSIS

In pertinent part, § 39-2-6, N.M.S.A. provides:

"Qualifications of members other than chief. -- Members of the New Mexico State Police, except the chief of the state police, must possess the following qualifications:

(a) They must at the time of their appointment be citizens of the United States and must have been bona fide residents of the state of New Mexico for **at least two (2) years prior to their appointment . . .**" (Emphasis supplied).

Taking the language above in its broadest sense, one might say it could include a person who lived in New Mexico for two years at any time. But the evident purpose of the qualification is to secure officers who are currently acquainted with the State of New Mexico and its people. This can be assured only if the residence is contemporaneous with appointment to the force.

We find only one guiding case. That is **Commonwealth v. Stephens**, 345 Pa. 436, 28 A.2d. 924, where a statute requiring a comptroller to be an elector at least four years "prior to his election" was considered. It was there held that the statute required one to be an elector for the stated period immediately prior to election. It was, accordingly, decided that one who had been a resident for five years in the past, but not next prior to election was disqualified.

We come to a similar conclusion in the interpretation of § 39-2-6 (a), supra. To fulfill the intention of the legislature, it is our opinion that the law requires that before one can become a member of the New Mexico State Police he must have been a resident of this state for two years immediately prior to appointment.

The statute relating to the recruit training school is § 39-2-15, N.M.S.A., 1953 Compilation. It sets no qualifications as to residence and we think it clear that the provisions in § 39-2-6, supra, are not applicable to mere candidates in the training school. In fact, the provision relating to training contemplates that some of those who have completed the school will not go directly into service:

". . . attendance may be extended to include persons who will go into the reserve, as hereinafter defined, and for whom there is no immediate prospect of appointment as a member of the state police." § 39-2-6, supra.

Thus, we conclude that a man may be accepted as a candidate for the recruit training school though he has not been a resident of this state for two years next prior to his attendance of the school. Subsequent to completion of the school the residence requirement for appointment to the force can be fulfilled.