

Opinion No. 62-37

March 1, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General William E Snead, Assistant Attorney General

TO: Mr. Milton E. Scudder, Director, New Mexico State Personnel Board, State Capitol, Santa Fe, New Mexico

QUESTION

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Are election officials holders of political office within the prohibition of the State Personnel Act?

CONCLUSION

See analysis.

OPINION

ANALYSIS

The question you present requires a construction of Sec. 5-4-42 (B), N.M.S.A., 1953 Comp. (PS), wherein a person subject to the Personnel Act is prohibited from holding "political office". This phrase has been previously construed by this office in Opinion No. 61-53. In that opinion, it was stated that the words must be construed by examining the words in the context in which they are used and the interpretation placed on them by the courts. No court decisions have been found construing these words in relation to offices similar to the offices held by election officials. Therefore, an examination of the context in which the words are used in the Personnel Act is in order.

The purpose of the Act is stated in Sec. 5-4-29, N.M.S.A., 1953 Comp., (PS), to be "to establish for New Mexico a system of personnel administration based solely on qualification and ability, which will provide greater economy and efficiency in the management of state affairs." If the method of appointment of election officials is strictly on a partisan basis or if it is controlled by partisan political motives, then it is obvious that at least the intent of the Personnel Act would be violated. On the other hand, if the officials are chosen in a nonpartisan manner and only act to see that elections proceed according to law, then the dangers against which the Personnel Act seeks to guard are not present. The danger specifically is that of allowing partisan political motives rather than sound administrative and legal considerations to govern the manner in which a job is performed. This danger must be guarded against both where employment under the Personnel Act is involved and where the duties of election officials are involved. With

this in mind, an examination of the statutory provisions for the appointment of election officials is in order.

Section 3-3-15, N.M.S.A., 1953 Comp., provides for appointment of election officials in each precinct and election district of the county. The county chairman of each political party is in effect given the right to choose the individuals from his party who will serve as officials and is guaranteed that his party will be represented according to his wishes. This is true because the recommendations which he makes must be followed by the county commissioners in choosing the officials. Therefore, partisan political control is almost absolute. This control is admitted in effect by the requirement that where a prima facie showing is made that the election officials have not complied substantially with the provisions of the Election Code, the burden falls upon the candidates of the political party which had majority representation or the Board of election officials to prove the legality of the actions of the election officials. Sec. 3-6-8, N.M.S.A., 1953 Comp. Upon consideration of the controlling part which partisan politics plays in the appointment of these officials, it is our opinion that the officials hold political office within the prohibition of the Personnel Act. This conclusion is further substantiated by the fact that throughout the Election Code, the election judges, clerks, etc., are referred to as officials.

A different conclusion is reached where judges and clerks of municipal elections are involved. In this case, there are no provisions for recommendations to be made by chairmen of political parties. The sole restriction on the trustees or council of a municipal corporation in appointing these judges and clerks is that no more than two be from the same political party. Therefore, the control which partisan political chairmen may exercise where precincts are involved is missing where municipal corporations are involved. Added to this is the fact that the trustees or council of municipal corporations are elected on a nonpartisan basis in almost every municipal corporation in the state. With these considerations in mind, we are of the opinion that the dangers discussed above are not present where employees under the Personnel Act are appointed as municipal election judges or clerks. We therefor conclude that these election judges and clerks are not holders of public office under the prohibition of the Personnel Act.