

Opinion No. 66-30

March 10, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Carolina R. Gonzales, County Clerk, Courthouse, Santa Fe, New Mexico

QUESTION

QUESTIONS

1. In order for a candidate for county commission or state representative to qualify for those offices, must the candidate file in the district where he resides or where he is registered?
2. How long before the date of filing for candidacy can a candidate change his residency in order to run in a certain district?
3. What address should be used in determining a candidate's precinct -- the address shown on the declaration of candidacy or that shown on the registration books?
4. How can the county clerk's office prove that a candidate for a district office resides in that district?

CONCLUSIONS

1. Where he resides.
2. Any time up to the filing date.
3. The address (or precinct) shown on the declaration of candidacy.
4. By an investigation.

OPINION

{*37} ANALYSIS

Article V, Section 13, New Mexico Constitution provides that:

"All district, county precinct and municipal officers, shall be **residents** of the political subdivisions for which they are elected or appointed. . . ." (Emphasis added.)

Section 15-37-3, N.M.S.A., 1953 Compilation (P.S.) provides that while county commissioners are to be elected at large in the county, each must be "a **resident** of the district from which he is elected," (Emphasis added.)

Additionally, Section 2-7-19, N.M.S.A., 1953 Compilation (P.S.), a portion of the 1965 House Reapportionment Act, provides that:

"Each member of the house of representatives shall **reside in** and be elected by the voters of the legislative district from which he is elected." (Emphasis added.)

Section 3-1-1, N.M.S.A., 1953 Compilation, states in pertinent part as follows:

"A person's residence shall be that place wherein he legally resides and has his domicile and from which when temporarily absent he intends to return."

In the case of **Gibbany v. Ford**, 29 N.M. 621, 225 Pac. 577 the Court held that the only general restriction against the right of every citizen of the United States who is a resident of, or a qualified voter within, this State to hold public office is that all reside within the political subdivision for which they were elected or appointed.

Now, while a person was a resident of a particular precinct when he originally filed his affidavit of registration, he may have moved to another precinct without changing his affidavit of registration. In such cases, his residence will generally be where he has his place of abode, and that will determine the district for which he should file for office.

In your second question you ask how long before the date of filing for candidacy can a candidate change his residency in order to run in a certain district. The determining date in this regard is the date of the election. Section 3-1-1, *supra*, states that a voter **at the date of election** must have resided in the state twelve months, in the county ninety days and **{*38} in the precinct thirty days next preceding the election.**

Since March 1, 1966, was the filing date for county offices and for the office of state representative, and since the primary election is to be held on May 3, 1966, a candidate could change his residency at any time up to March 1, 1966, so long as the legislative district is in the same county.

As pointed out in the answer to question No. 1, people do move -- sometimes without changing their affidavit of registration. Therefore, the address (or precinct) shown on the declaration of candidacy should be used in determining the candidate's precinct.

In answer to your fourth question, if the county clerk's office has any reason to believe that a person's residence is other than that shown on the declaration of candidacy, the county clerk should investigate to ascertain if the address (or precinct) shown on the declaration of candidacy is in fact the candidate's residency. The county clerk may use his staff to do so, or may call upon the services of the sheriff's office.