Opinion No. 67-14

January 24, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Honorable Emmett C. Hart State Senator Legislative-Executive Building Santa Fe, New Mexico

QUESTION

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Section 14-13-6, N.M.S.A., 1953 Compilation (P.S.) provides that the governing body for a commission-manager municipality shall consist of five commissioners, one to be elected from each district but all to be voted on at large. Does a commissioner have to be a resident of the district he represents?

CONCLUSION

No.

OPINION

*{*18}* **ANALYSIS**

Section 14-11-6, N.M.S.A., 1953 Compilation, since repealed by the Municipal Code, provided that in commission-manager municipalities with a three thousand to ten thousand population a commissioner had "to reside in the district from which elected."

This requirement was deleted from the Code provisions relating to districts in commission-manager municipalities -- and for good reason. Under the doctrine set forth in **Gibbany v. Ford,** 29 N.M. 621, *{*19}* such a requirement would violate Article V, Section 13 of the New Mexico Constitution.

That provision, as amended in 1960, reads as follows:

"All districts, 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."

The 1960 amendment added the last two sentences. We mention this because in Opinion No. 60-48 we pointed out that any statute requiring **county** commissioners to reside in their districts would be unconstitutional -- this for the reason that a county

commission district is not a political subdivision. So the constitution was amended to allow the legislature to enact a law requiring county commissioners to reside in their respective districts. And this it did in Section 15-37-3, N.M.S.A., 1953 Compilation (P.S.) (except as to H-Class Counties).

No such amendment was adopted for **city** commission districts so the situation falls squarely within the principle enunciated in **Gibbany v. Ford,** supra. It was stated as follows in that decision:

"To permit the Legislature to say that a person who resides within a municipality cannot hold the office of alderman unless he also resides within the ward he represents authorizes a restriction and an added eligibility to hold that office, which the Constitution in plain terms denies. No such super-addition can be made effective until such time as the Legislature confers upon wards of a city, town, or village some powers or functions of local self-government, so that they may be said to be political subdivisions."

The same is true of city commission districts. They are not political subdivisions. Thus there is not (and there could not be) any **district** residence requirement for city commissioners.

By: Oliver E. Payne

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