

Opinion No. 67-33

March 1, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. Clay Buchanan Director Legislative Council Legislative-Executive Building
Santa Fe, New Mexico. Attention: Mr. Malvin D. Dohrman Attorney

QUESTION

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If enacted into law, would House Bill 109 of the first session of the Twenty-Eighth Legislature, requiring members of the local school board of the Albuquerque Public School District to reside in and be elected from certain divisions within the school district, violate Article 5, Section 13 or any other provision of the Constitution of New Mexico?

CONCLUSION

Yes.

OPINION

{*41} ANALYSIS

Article 5, Section 13, New Mexico Constitution (P.S.) provides in pertinent part as follows:

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

What House Bill 109 purports to do is divide the municipal school district in Class A counties into five "school board districts", using senatorial districts to draw the lines and require that members of the board of education "be resident of and be elected by the qualified electors of a separate school board district". In other words the bill attempts to create districts within a district and require residence within such "subdistrict".

These subdistricts are not political subdivisions and thus the residency provisions in House Bill 109 violate Article 7, Section 2, New Mexico Constitution, relative to the right to hold a public office.

Our Supreme Court specifically so held in **Gibbany v. Ford**, 29 N.M. 621, when the issue was a statutory residence requirement in their wards for aldermen. In that case the Court stated as follows:

". . . 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 superaddition 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. . . ."

No powers or functions of local self-government have been granted to these subdistricts and thus they are not political subdivisions. Such being the case, the residency requirements in House Bill 109 contravene the Constitution. See Opinion of Attorney General No. 67-14, issued January 24, 1967.

By: Oliver E. Payne

Deputy Attorney General