

Opinion No. 68-71

July 2, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: E. C. Serna District Attorney Sixth Judicial District P.O. Box 1025 Silver City, New Mexico

QUESTION

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Is the magistrate court established in Section 36-1-1, N.M.S.A., 1953 Compilation (1968 Interim Supp.) a county office so as to fall within the restrictions of Article X, Section 2, Constitution of New Mexico?

CONCLUSION

No.

OPINION

{*115} ANALYSIS

Article X, Section 2, Constitution of New Mexico provides as follows:

All county officers shall be elected for a term of two years, and after having served two consecutive terms, shall be ineligible to hold any county office for two years thereafter.

The legislature was given the power to create the magistrate court by Article VI, Section 26, Constitution of New Mexico. That section provides:

The legislature shall establish a magistrate court to exercise limited original jurisdiction as may be provided by law. The magistrate court shall be composed of such districts and elective magistrates as may be provided by law. Magistrates shall be qualified electors of, and reside in, their respective districts, and the legislature shall prescribe other qualifications. Magistrates shall receive compensation as may be provided by law, which compensation shall not be diminished during their term of office.

This section is mandatory in requiring that the courts be created by districts. There is nothing in the section to indicate that the courts would be county offices. To the contrary, it is in our opinion that it is clear that the courts are district offices and as such, are not within the restrictions of Article X, Section 2, Constitution of New Mexico.

We have taken note of the fact that the magistrate court districts so far created are coextensive with the various counties of the state. Section 36-1-2, N.M.S.A., 1953 Compilation (1968 Interim Supp.). This, in our opinion, does not derogate the conclusion reached above.

By: Roy G. Hill

Deputy Attorney General