

Opinion No. 68-88

September 3, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: William J. Perry Assistant District Attorney County Court House Las Cruces, New Mexico

QUESTION

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Did the New Magistrate Bill, the same being Laws 1968, Chapter 62, Section 1 through 172, legally abolish the office of constable, or would a constitutional amendment be required?

CONCLUSION

See analysis.

OPINION

{*140} **ANALYSIS**

The New Mexico Constitution does not provide for the creation of the position of constable. Article VI, Section (1) of the Constitution states that:

"The judicial power of the State shall be vested in the senate when sitting as a court of impeachment, a Supreme Court, district courts, probate courts, justices of the peace, and such courts inferior to the district courts as may be established by law from time to time in any county or municipality of the state including juvenile courts."

Repealed Article VI, Section 26, stated that:

"Justices of the peace, police magistrates **and constables** shall be elected in and for such precincts or districts as are or may be provided by law" (Emphasis supplied).

The Supreme Court of this state in **Stout v. City of Clovis**, 37 N.M. 30, 16 P.2d 936 (1932) held that Article VI, Section 26 did not establish or create the office of Justices of the Peace, police magistrates, or constables, but merely defined their manner of selection.

Although the office of justice of the peace was created by the Constitution and thus its abolishment necessitated general election approval in November of 1966, the office of constable was not thus vested by the Constitution pursuant to Article VI, Section 1.

{*141} Consequently, Chapter 62, Section 172 of the 1968 Laws stating:

"No elections shall be conducted for the office of justice of the peace, institutional traffic justice **or constable**.. . ." (Emphasis supplied)

effectively and legally abolished the office of constable.

The new magistrate bill, Chapter 62, Section 1 - 172, Laws of 1968, repealed all previous justice of the peace and constable provisions particularly Section 36-1-1, N.M.S.A., 1953 Compilation. That section reads:

"At each general election there **shall be elected** in each precinct one (1) justice of the peace and (1) **constable** in the manner now provided by law" (Emphasis supplied).

This would appear to be the statutory authority for the creation of the position of constable. Since the legislature and not the Constitution established the position of constable, a constitutional amendment is not necessary for the abolishment of the constable position.

The position of constable has been legally abolished by the New Magistrate Bill. Chapter 62, Section 172 (b) of the Laws of 1968.

By: Spencer T. King

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