

## Opinion No. 69-23

April 4, 1969

**BY:** OPINION OF JAMES A. MALONEY, Attorney General

**TO:** Honorable David F. Cargo, Governor of New Mexico Legislative-Executive Building, Santa Fe, New Mexico

### QUESTIONS

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Is Senate Bill 106, which provides for districting municipalities having a population of one hundred thousand or more into six commissioner districts, constitutional?

#### CONCLUSION

No.

### OPINION

#### {\*34} ANALYSIS

Senate Bill 106 provides as follows:

"The commission of each municipality having a population of one hundred thousand persons or more is districted into six commissioner districts **with each district commissioner a resident of the district he represents and** elected by the qualified electors of the city at large." (Emphasis added)

The question presented is whether the legislature may constitutionally require each city commissioner to reside in the district he represents. This was answered by this office in Attorney General Opinion 65-160, issued August 23, 1965 as follows:

"the only method by which a requirement that city commissioners reside in the district from which they were elected can be imposed is by constitutional amendment. Article V, Section 13 provides that all district, county, precinct and municipal officers, shall be residents of the political subdivisions for which they are elected or appointed. However, city commission districts are not political subdivisions (Gibbany v. Ford, 29 N.M. 621, 225 Pac. 577); hence a district residence requirement would in fact add an additional qualification for holding office. Article V. Section 13 was amended in 1960 to provide that "the legislature may in its discretion provide that elective county commissioners reside in their respective county commission districts." It has not been so amended in the case of city commissioners, and thus no statute, charter or ordinance provision could validly require district residence."

Since Senate Bill 106 provides for six commissioner districts, "with each district commissioner a resident of the district he represents" in municipalities having a population of one hundred thousand or more, it is unconstitutional.