

Opinion No. 69-99

August 25, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Jeff Bingaman, Assistant Attorney General

TO: Charles M. Tansey, Chairman, Executive Committee Constitutional Convention, Legislative Executive Building, Santa Fe, New Mexico

QUESTIONS

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1. If the Office of State Auditor remains an elected office, could the Constitution contain qualifications for the State Auditor, such as the requirement that he be a certified public accountant and with some minimum number of years engaged in the practice of accounting?
2. If the State Land Commissioner remains an elected office, could the Constitution provide that the State Land Office is to be subject to the Personnel Act and Merit System?
3. Could the Constitution provide that the State Land Office, including its trust funds, is to be audited by the State Auditor?

CONCLUSIONS

1. Yes.
2. Yes, but see analysis.
3. Yes, but see analysis.

OPINION

{*157} ANALYSIS

In response to the first question, it seems clear that the establishment in a constitution of qualifications for holding a constitutionally {*158} created office is completely acceptable. As one example of this we would cite the recently adopted Section 32 of Article VI. This section makes being licensed to practice law in this state a disqualifying factor for the five citizens on the judicial standards commission. A closer analogy to the situation which you ask about in the first question is Section 8 of Article VI which specifies the qualifications for Supreme Court Justices.

"No person shall be qualified to hold office of Justice of the Supreme Court unless he be at least thirty years old, learned in the law and shall have been in the actual practice of law and resided in this state or the Territory of New Mexico, for at least three years."

The requirement that a person be "learned in the law" has been interpreted by the New Mexico Supreme Court to mean that he or she be a member of the State Bar. (**State ex rel. Chavez v. Evans**, 79 N.M. 578, 446 P.2d 445 (1968)). If further authority is needed we would refer you to Section 53 of Article IV of the Michigan Constitution which requires the Auditor to be a certified public accountant.

In response to your second question, we would point out that the State Land Office is presently subject to the Personnel Act. See Section 5-4-28, N.M.S.A., 1953 Compilation through Section 5-4-46, N.M.S.A., 1953 Comp. (See also Attorney General Opinion 61-28 issued April 7, 1961). The only question remaining is therefore whether this could be made a constitutional provision rather than a statutory provision. There is no legal obstacle to such a change. Since we know of no merit system independent of the Personnel Act within the state I assume you are using the terms synonymously.

We see no legal obstacle to a constitutional requirement that the State Land Office and the trust funds be audited by the state auditor.