

## Opinion No. 70-16

February 9, 1970

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

**TO:** The Honorable Frank M. Herrera New Mexico State Representative New Mexico House of Representatives Legislative-Executive Building Santa Fe, N.M. 87501

### QUESTIONS

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May an individual who has been convicted of a federal felony and who has been confined in a federal prison be a candidate for municipal office?

#### CONCLUSION

No. Conviction of a felony under the laws of this State or of the United States disqualifies the felon from holding municipal office in New Mexico.

### OPINION

#### {\*26} ANALYSIS

The statutory provisions governing the operation and conduct of municipal government are found in the Municipal Code, Sections 14-1-1 through 14-59-2, N.M.S.A., 1953 Compilation. With respect to the qualifications required of municipal officials, Section 14-8-6 declares:

"14-8-6. ELECTION -- CANDIDATE FOR OFFICE. -- Any qualified elector may be a candidate for municipal office in the municipality in which he resides."

Thus, in order for an individual to qualify as a candidate for municipal office, he must meet the initial standards required for the enjoyment of the status of "qualified elector."

The Constitution of New Mexico specifically describes the qualifications required of "qualified electors." Article VII, Section 1, states in relevant part:

"Section 1. [QUALIFICATIONS OF VOTERS -- SCHOOL ELECTIONS -- REGISTRATION.]

Every citizen of the United States, who is over the age of twenty-one years, and has resided in New Mexico twelve months, in the county ninety days, and in the precinct in which he offers to vote thirty days, next preceding the election, except idiots, insane persons, and **persons convicted of a felonious or infamous crime** unless restored to

political rights, shall be qualified to vote at all elections for public officers. The legislature may enact laws providing for absentee voting by qualified electors. All school elections shall be held at different times from other elections." (Emphasis added.)

The New Mexico Supreme Court has, in a recent case, addressed the question {27} of whether conviction of a **federal** felony is within the meaning of the constitutional language cited above. In **State ex rel. Chavez v. Evans**, 79 N.M. 578, 446 P.2d 445 (1968), the Court declared that an individual convicted of a felony in federal court was barred from voting or holding office in this state. The Court observed:

"Although we recognize that the authorities are in no sense unanimous, we are convinced that the vast majority of the better-reasoned opinions are to the effect that the conviction of a felony in a foreign jurisdiction, such as the federal court in this instance, should be considered by the courts of another state as being the conviction of a felony within the constitutional prohibition . . . it is our considered judgment that the conviction of a felony in some other jurisdiction has the effect of casting a shadow on the individual involved and must be considered as within the constitutional prohibition denying the right to suffrage and the right to hold office to such a person."

It would appear abundantly clear, therefore, that the constitutional prohibition reaches to candidates for municipal office. The Supreme Court of this state has authoritatively determined that the Constitution of New Mexico bars convicted felons from voting or holding office; by the terms of the Municipal Code, the prohibition extends to candidates seeking municipal office. Since only "qualified electors" may be candidates for municipal office, and since the Constitution of this state denies the status of "qualified elector" to a convicted felon, such persons are barred by the statutes and the Constitution of this state from seeking or holding municipal office.

By: Richard J. Smith

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