

Opinion No. 70-49

May 7, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: E.T. Johnson Court Administrator Supreme Court of New Mexico Santa Fe, New Mexico 87501

QUESTIONS

FACTS

Two magistrates have filed their declaration of candidacy for county offices that are non-judicial in nature. Canon 30 of the Judicial Canons of Ethics states that a judge should not become a candidate for any office other than a judicial office and if a judge should decide to become a candidate for any office not judicial, he should resign.

QUESTIONS

1. May the director of the administrative office of the courts suspend the certificates of magistrate qualifications of these magistrates in the event they do not resign?
2. Is there any other lawful action open to the director to prevent these magistrates from continuing to hold office while an active candidate for a non-judicial office?

ANSWERS

1. Yes.
2. See analysis.

OPINION

{*81} ANALYSIS

1. Section 36-9-1, N.M.S.A., 1953 Compilation (1969 P.S.) authorizes the director to "promulgate and enforce regulations governing the administration of the magistrate court."

Pursuant to Section 36-9-1 supra, the director of the administrative office of the courts promulgated magistrate court Regulation No. 69-2 which established that all magistrates would be subject to Section 21-2-1, (31) N.M.S.A., 1953 Compilation (1969 P.S.), which section is known as Rule 31 of the Supreme Court rules, Canons of Judicial Ethics.

Canon 30. "Candidacy for office," states in part:

"While holding a judicial position he should not become an active candidate either at a party primary or at a general election for any office other than a judicial office. If a judge should decide to become a candidate for any office not judicial, he should resign in order that it cannot be said that he is using the power or prestige of his judicial position to promote his own candidacy or the success of his party."

{*82} Regulation No. 69-3 promulgated by the office of the court administrator became effective April 19, 1969.

Section 36-9-2, N.M.S.A., 1953 Compilation (1969 P.S.) empowers the director of the administrative office of the courts to suspend the certificate of any magistrate who has violated any law or regulation of the administrative office concerning the administration of the magistrate court. The determination of a violation is made by the director.

The issue is whether a violation of the judicial canons is a violation of a law or regulation of the administrative office concerning administration of a magistrate court. We believe that such a regulation properly comes within the powers granted by Section 36-9-2 supra. Webster's New International Dictionary 7th Edition defines "administer" as "1. To manage or conduct, to direct or superintend the execution, application, or **conduct of**;" (emphasis added). An administrative body has such authority as is given it by law. **Vermejo Club v. French**, 43 N.M. 45, 85 P.2d 90 (1939), and furthermore powers of administrative bodies are not limited to those expressly granted by statutes but include all powers that may fairly be implied therefrom **Morrow v. Clayton**, 326 F.2d 36, (1963).

Turning to your second question, we note that the Canons of Judicial Ethics are made applicable to magistrates by Supreme Court Rule 30 adopted February 25, 1969.

New Mexico Constitution Art. VI, Section 3 states in part:

"The Supreme Court shall have original jurisdiction in quo warranto and mandamus against all state officers, boards and commissions, **and shall have a superintending control over all inferior courts; . . .**" (emphasis added.)

In **re Petition of Bd. of Commissioners of State Bar of New Mexico** 65 N.M. 332, 337 P.2d 400 (1959) implies that violations of the Canons of Judicial Ethics (not then adopted) would be a matter for the Supreme Court's superintending power under Art. VI Section 3 supra, and that such actions or proceedings are for the Supreme Court alone.

The Supreme Court has implied power [see **State ex rel. Bliss v. Greenwood**, 63 N.M. 156, 315 P.2d 223 (1957)] reasonably necessary to achieve results for which it is responsible. Its power to make rules imports power to enforce them. In **re Mattera** 34 N.J. 259, 168 A.2d 38 (1961).

In this respect, a proceeding to notify the court of a violation of its rules is ordinarily instituted by an accusation, pleading or affidavit presented to the Court. **Nye v. U.S.**, 113 F.2d 1006 (1940); **Byals v. U.S.**, 69 F.2d 946 (1934).

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