

Opinion No. 71-112

October 4, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: The Honorable Betty Fiorina Secretary of State State of New Mexico Executive-Legislative Building Santa Fe, N.M. 87501

QUESTIONS

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Can an eighteen-year-old be commissioned a notary public in New Mexico?

CONCLUSION

Yes.

OPINION

{*167} ANALYSIS

In Chapter 213, the 1971 Legislature of the State of New Mexico adopted the following law providing for the age of majority to be eighteen years:

"Section 1. AGE OF MAJORITY -- EIGHTEEN YEARS -- EXCEPTION. --

A. Except as provided in Subsections B and C, notwithstanding any other law to the contrary:

(1) any person who has reached his eighteenth birthday shall be considered to have reached his majority and is an adult for all purposes the same as if he had reached his twenty-first birthday;

(2) any law conferring any right or privilege, or imposing any duty or obligation, upon any person who has reached his twenty-first birthday shall apply to any person who has reached his eighteenth birthday;

(3) any law which denies any right or privilege to persons who have not reached their twenty-first birthday shall apply only to persons who have not reached their eighteenth birthday; and

(4) any law, except the liquor control act, which differentiates between treatment to be accorded persons who have reached their twentyfirst birthday and those who have not,

shall differentiate between treatment to be accorded persons who have reached their eighteenth birthday and those who have not.

B. It is the intent of the legislature that this general law shall control over any conflicting prior special law except that it shall not apply to or change any age requirements for exercising the elective franchise.

C. Provided, however, that for the purposes of the Uniform Gifts to Minors Act, as it relates to any gift made prior to the elective date of this act, the donee shall not be entitled to delivery or payment over of the gift until he has reached his twenty-first birthday."

Sections 35-1-1 through 12, N.M.S.A., 1953 Comp. (1971 P.S.), deal with notaries public. At Section 35-1-2, **supra**, it is stated that "[e]ach notary public shall be a qualified elector of this state and a person of good moral character." The definition of "qualified elector" is then important in determining who may be a notary. This definition is found at Article VII, Section 1 of the New Mexico State Constitution:

"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.)

{*168} Whether the reference to the above provision in Section 35-1-2, **supra**, would require that notaries be twenty-one is the question at issue here. It is the opinion of this office that the statutory reference to "qualified elector" is superceded by requirements of Chapter 213, **supra**, and therefore any person eighteen years old meeting all other requirements (i.e., residency, citizenship) may qualify as a notary public. Chapter 213 at Section 2, **supra**, emphatically states that:

"Any law conferring any right or privilege . . . upon any person who has reached his twenty-first birthday shall apply to any person who has reached his eighteenth birthday."

In Section B, the Legislature set forth its intent that "this general law shall control over **any conflicting** prior special law" (emphasis added). This provision and the fact that only one exception is specifically stated (that the law shall not apply to or change any age requirements for exercising the elective franchise) leads us to conclude that Chapter 213 does affect the age at which otherwise qualified individuals may become notaries.

Thus an eighteen-year-old may be commissioned a notary public in New Mexico.

By: Leila Andrews

Assistant Attorney General