

Opinion No. 74-35

October 31, 1974

OPINION OF: DAVID L. NORVELL, Attorney General

BY: W. Royer, Assistant Attorney General

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

QUESTIONS

Is an individual who is mentally retarded entitled to register and vote in New Mexico?

CONCLUSION

See Analysis.

ANALYSIS

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The qualifications for voters in the State of New Mexico are found in Article VII, Section 1 of the New Mexico Constitution. It provides:

"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.

"The legislature shall have the power to require the registration of the qualified electors as a requisite for voting, and shall regulate the manner, time and places of voting. The legislature shall enact such laws as will secure the secrecy of the ballot, the purity of elections, and guard against the abuse of elective franchise. Not more than two members of the board of registration, and not more than two judges of election shall belong to the same political party at the time of their appointment." (Emphasis added.)

You will note that our Constitution disqualifies individuals who are classified as "idiots" or "insane" from the suffrage privilege. The term "insane" was discussed in Opinion of the Attorney General No. 69-65, issued June 18, 1969. In that opinion, the Honorable James Maloney determined that an insanity "determination must be made or have been

made by a District Court based upon applicable statutory requirements which include medical statements." We concur with that opinion today. We are enclosing a copy of that opinion for your convenience.

We must now consider the definition of an "idiot" as that term is used in our Constitution and determine what relationship that term has to the definition of "mental retardation."

In **Summers v. Pumphrey**, 24 Ind. 231 (1865) the Indiana Supreme Court declared:

"Bouvier says that idiocy is 'that condition of mind in which the reflective, or all, or a part, of the affective powers, are either entirely wanting, or are manifested to the least possible extent. Idiocy generally depends upon organic defects.' And that an idiot 'is a person who has been without understanding from his nativity, and whom the law, therefore, presumes never likely to attain any. It is an imbecility, or sterility, of mind, and not a perversion of the understanding. When a man cannot count or number twenty, nor tell his father's or mother's name, nor how old he is, having been frequently told of it, it is a fair presumption that he is devoid of understanding.'

"This rule would seem to be a sufficient test of the want of understanding, where the power to the extent indicated does not exist; but to hold that a person should be deemed of sound mind, and responsible for his acts in every case, where he possesses sufficient mental capacity to count twenty, and tell his father's and mother's names, or his own age, would seem to fix a rather low and uncertain standard of a sound mind.

"Mr. Chitty, in his work on Contracts, p. 130, says: 'An idiot, or natural fool, is one that hath no understanding from his nativity; and who is, therefore, by ^{*70} law, presumed not to be likely to attain to any. A person is not an idiot if he hath any glimmering of reason, so that he can tell his parents, his age, or the like common matters.'" **Summers v. Pumphrey, supra**, at 244.

In **Hauber v. Leibold**, 76 Neb. 706, 107 N.W. 1042 (1906), the Supreme Court of Nebraska declared:

"According to Webster, an idiot is a natural fool, or fool from his birth; a human being in form, but destitute of reason or the ordinary intellectual powers of man; a foolish person; one unwise. Bouvier says, that idiocy is a condition of mind in which the reflective, or all, or a part, of the affected powers are either wanting or are manifested to the least possible extent. In *re Owings*, 1 Bland (Md.) 370, 17 Am. Dec. 311, it is defined as that condition in which a human creature has never had from birth any, or the least, glimmering of reason, and is utterly destitute of all intellectual faculties in which man in general is so eminently and peculiarly distinguished. In *Clark v. Robinson*, 88 Ill. 498 (502), the court, citing Blackstone, said: 'An idiot or natural fool is one that hath no understanding of his nativity, and therefore is by law presumed never likely to obtain any. A man is not an idiot if he have any glimmering of reason, so that he can tell his parents, his age, or the like common matters.' In *Bicknell v. Spear*, (Sup.) 77 N. Y.

Supp. 920, the court defined an idiot as one having no power of mind whatever."
Hauber v. Leibold, supra, at 1044.

"Idiot" is defined in the **Attorneys' Dictionary of Medicine, Schmidt**, (Matthew Bender, 1974) as:

"A feebleminded person whose mental age is under two years, i.e., an adult whose mentality is lower than that of a normal child two years old"

The **American Psychiatric Glossary**, American Psychiatric Association (3rd Ed., 1969) states that the term "idiot" is an obsolescent term and refers the reader to mental retardation. Mental retardation is defined as:

"Subnormal general intellectual functioning, which may be evident at birth or develop during childhood. Learning, social adjustment, and maturation are impaired. Emotional disturbance is often present. The degree of retardation is commonly measured in terms of IQ: borderline (68-83), mild (52-67), moderate (36-51), severe (20-35), and profound (under 20)."

The Glossary does not define the various grades further than noted above. However, the Attorneys' Dictionary of Medicine, **supra**, provides definitions for the following terms:

Mild Mental Deficiency : A grade of mental deficiency in which the subject has an I.Q. ranging from 70 to 85. The vocational capacities are generally impaired, but no special guidance is required.

Moderate Mental Deficiency: A grade of mental deficiency in which the subject has an I.Q. ranging from 50 to 70. The vocational capacities are markedly impaired and there is need for special guidance.

Severe Mental Deficiency : A grade of mental deficiency in which the subject has an I.Q. below 50. The Protective capacities are lacking, so that complete custodial care is required.

Imbecile: A feeble-minded person with a mental age between two and seven years The I.Q. is between 25 and 49. An imbecile is mentally above an idiot but below a moron.

Moron : A feeble-minded person with a mental age between eight and twelve years The I.Q. varies between 50 and 74.

{*71} As you can see from the various definitions, the test for "idiocy" is very subjective. See Opinion of the Attorney General No. 73-44, issued on May 23, 1973.

It is our opinion that the drafters of our Constitution, and people of New Mexico who adopted it, intended that a reasonable standard be applied to voter qualifications. It is

our opinion that a reasonable standard is whether an individual can understand the nature of the act of voting. If the individual can understand and relate to the registration officer the nature of his action, he should be entitled to vote even though he may be mentally retarded or deficient to some extent. As the Illinois Supreme Court declared in **Welch v. Shumway**, 232 Ill. 54, 83 N.E. 549 (1907):

"When a vote is attacked on the grounds that the voter who cast it was non compos mentis [not of sound mind], it is necessary to establish satisfactorily, by competent evidence, the alleged want of intelligence, and the test would probably be about the same as in cases where the validity of a will is attacked on the grounds that the testator was not of sound mind when it was executed. If the voter knew enough to understand the nature of his act -- if he understood what he was doing -- that is probably enough." **Welch v. Shumway, supra**, 83 N.E. at 558.

Thus, it is our opinion that mentally retarded individuals who can understand the nature of their actions should be allowed to register and vote.