

Opinion No. 75-26

April 14, 1975

BY: OPINION OF TONEY ANAYA, Attorney General

TO: Representative Reynaldo S. Medina P. O. Box 676 Chama, New Mexico 87520

QUESTIONS

FACTS

The Chama municipal judge has been a resident of Chama for over thirty years. He votes in Chama and has property and business interests there. He is currently employed fulltime, however, at a bank located at the Jicarilla Apache Indian Reservation some distance from Chama. The bank maintains a residence for him on the reservation where he can and does, on occasion, remain overnight. However, he usually stays three or four nights a week in Chama. No question is raised as to physical or functional incompatibility regarding his performance of the duties of a municipal judge.

QUESTIONS

Under the factual situation described above, may the municipal judge legally discharge his duties as an elected official of Chama?

CONCLUSION?

Yes.

OPINION

{*85} ANALYSIS

Article V, Section 13 of the New Mexico Constitution states, in part:

"All district, county, precinct and municipal officers, shall be residents of the political subdivisions for which they are elected or appointed . . ."

Additionally, an elected official must be a qualified elector of the State of New Mexico, Article VII, Section 2, of the New Mexico Constitution. See also Section 14-8-6, NMSA, 1953 Comp. The question raised herein, however, is directed primarily toward the application of Article V, Section 13, **supra**, to the factual situation presented.

In **State v. Williams**, 57 N.M. 588, 261 P.2d 131 (1953), the Supreme Court of New Mexico decided a similar question. In that case, a quo warranto action was brought to oust the mayor of Truth or Consequences from office. The question was whether the

mayor was a qualified resident and elector of Truth or Consequences, in conformance with Article V, Section 13, **supra**, and Article VII, Section 2, **supra**. The Supreme Court approved the trial court's findings that the mayor was a qualified resident and voter of the city, notwithstanding evidence that the mayor had an **additional** residence in Williamsburg. The Court stated:

". . . A man can have only one place of residence for voting purposes and certain other residences, but there is no reason, why, within the meaning of the above section of the constitution, he may not have more than one place to reside in. A man may have a city home, ranch home, summer home, . . . and also a place of permanent abode."

* * *

"In case of doubt as to a voter's residence, it is resolved in favor of the permanency of residence in the precinct where he casts his ballot . . . Residence is made up of fact and intention. There must be the fact of abode and the intention of remaining."

Based on the facts regarding the Chama municipal judge, and the controlling case of **State v. Williams, supra**, it is our opinion that the Chama judge has his permanent abode and voting residence in Chama and is qualified to hold elective office in that municipality. He may also be considered to have an additional residence on the reservation, but this does not defeat his right to hold elective office in the city in which he has his permanent and voting residence. Doubt, if any, is resolved in favor of the permanency of residence in the precinct wherein the judge casts his ballot. **State v. Williams, supra**.

{*86} As stated above, no question has been raised regarding physical or functional incompatibility regarding his performance of the duties of a municipal judge and, therefore, no comment is made with respect to such matter.

By: Ralph W. Muxlow II

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