

Opinion No. 87-03

February 9, 1987

OPINION OF: HAL STRATTON, Attorney General

BY: David A. Garcia, Assistant Attorney General

TO: George Galenis, State Representative, 1108 Martinelli, Gallup, New Mexico 87301

QUESTIONS

May a member of the Middle Rio Grande Conservancy District Board of Directors who no longer owns any real property in the District continue to serve on the Board?

CONCLUSIONS

No.

ANALYSIS

Directors of conservancy districts must be "qualified electors" of the district and must reside within both the conservancy district and county from which they are elected. N.M. Stat. Ann. § 73-14-19 (1978). A "qualified elector" is a "...natural person who owns real property within the benefitted area of the conservancy district or resides on and owns legal or equitable title in tribal lands, and who is over the age of majority." *Id.* at Section 73-14-20. Thus, directors must be qualified electors and qualified electors must own real property within the conservancy district. In sum, directors must own real property within the conservancy district.

Eligibility to hold a public office is generally considered to be of a "continuing nature." *State ex rel. Repay v. Fodeman*, 300 A.2d 729 (Conn., 1972). That the candidate may have been qualified at the time of his election is not sufficient to entitle him to hold the office if during the continuance of the incumbency he ceases to be qualified. *State ex rel. Repay, id.* If, during his term, a conservancy district board member ceases to own real property in the district, he ceases to be a qualified office holder.

Section 73-14-21 states that a director, "unless removed from office, shall serve until his successor is duly elected...." A director who no longer owns land in the district will thus hold his office until removed. Section 73-14-23 provides that: "A member of the conservancy district board may be suspended or removed in the same manner and for the same reasons that a county officer may be suspended or removed." New Mexico statutes provide procedures for removal of public officers for cause, including malfeasance, neglect, incompetency, corruption, criminal activity and abandonment of office. N.M. Stat. Ann. §§ 10-4-1 to 10-4-29; 10-6-1 to 10-6-6.

These provisions do not address directly the removal of officers who have lost their qualifications. Even if no statutory remedy is available, however, an action in quo warranto may be used to challenge the holding of an office by an ineligible person. *Olson v. Grilly*, 67 N.M. 432, 356 P.2d 449 (1960). Quo warranto is available when no other adequate remedy at law exists. *Orchard v. Board of Commissioners of Sierra County*, 42 N.M. 172, 76 P.2d 41 (1938). The procedures for pursuing quo warranto actions are contained in N.M. Stat. Ann. §§ 44-3-1 through 44-3-16.

To summarize, conservancy district directors who cease to own land in the district lose their eligibility to continue to serve as directors. Their holding of the office may be challenged with a quo warranto action.

Respectfully submitted,

ATTORNEY GENERAL

HAL STRATTON, Attorney General