

**March 13, 2012 Advisory Letter---Term of Office for Sheriff Appointed to Fill
Vacancy**

The Honorable Carroll H. Leavell
New Mexico State Senator
P.O. Drawer D
Jal, NM 88252

Re: Opinion Request – Term of Office for Sheriff Appointed to Fill Vacancy

Dear Senator Leavell:

You have requested our advice regarding the length of the term of office of Sheriff Mark Hargrove following his appointment. Sheriff Hargrove was appointed to fill a vacancy created when the incumbent died during the first year of his second term of office. Please note that our office recently issued Attorney General Opinion No. 12-04, which addressed the same question regarding the term of a probate judge appointed to replace a probate judge who passed away during her first year in office. A copy of the opinion is enclosed for your reference.

We concluded in Opinion No. 12-04 that: (1) A judge appointed to replace a probate judge who was in the first year of a four year term does not finish the original office-holder's term in office and must run in the first general election following appointment if they wish to continue to hold the position; (2) the appointed probate judge is subject to all of the normal legal requirements of any candidate running for that office and therefore must comply with the applicable provisions of the Election Code; and (3) if the appointed probate judge is elected in the next election cycle, the appointee must run again two years later when the original term expires.

Under the state constitution and statutes, probate judges and sheriffs are treated the same with respect to terms of office and the timing of elections. See N.M. Const. art. X, § 2; NMSA 1978, § 10-3-3. Because of the legal reasoning set forth in Opinion No. 12-04 and because of the fact that the terms of probate judges and sheriffs are treated the same under the state constitution and statutes, we believe that Opinion No. 12-04 answers your inquiry.[1] If Sheriff Hargrove wishes to stay in office, he must run for election in the next general election and must comply with all applicable provisions of the Election Code. If elected, he must run again when the original term expires.

We note that your request to us was for a formal Attorney General's Opinion on the matters discussed above. Such an opinion would be a public document available to the general public. Although we are providing you our legal advice in the form of a letter instead of an Attorney General's Opinion, we believe that this letter is also a public document and not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the public.

Sincerely,

MICHAEL S. WILLIAMS
Assistant Attorney General

[1] We note from your request that the Lea County Attorney cited *Walker v. Dilley*, 86 N.M. 796, 528 P.2d 209 (1974) to suggest that an appointed county official holds that appointment for the full unexpired term of the previous office-holder. The main question presented to the New Mexico Supreme Court in *Walker* was whether the Board of County Commissioners of Chaves County could legally appoint *Walker* as an “acting” county clerk and then subsequently appoint Dilley as a “permanent” county clerk. The New Mexico Supreme Court found that the County Commissioners exceeded their authority by attempting to appoint Dilley as the permanent county clerk when the office was not vacant due to Walker’s appointment. It is our opinion that New Mexico Supreme Court did not consider or decide the issue of the length of the unexpired term of the county clerk in *Walker*. The New Mexico Supreme Court’s opinion in *Walker* is consistent with our analysis in Opinion 12-04. Walker, “[w]as appointed to fill the vacancy, and . . . thus entitled to hold office until her successor shall be duly elected and qualified according to law. . . .” *Id.* at 799.