

Opinion No. 12-955

October 31, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Mr. G. C. Hampton, Aztec, N. M.

COUNTY COMMISSIONERS.

Removal of a county commissioner from the district for which he was elected to another part of the county does not create a vacancy in the office.

OPINION

{*110} I have just received your letter of the 28th instant. I am of opinion that the removal of a county commissioner from the district for which he was elected, to another part of the county, does not so disqualify him as to create a vacancy, and I will as briefly as possible indicate to you the reasons for this opinion.

We must start with the idea that, unless distinctly made so by constitution or statute, residence in any particular place is not a {*111} necessary qualification to hold office. In the absence of any such restriction of requirement a man might be elected even in one county to hold office in another, although such a happening is so improbable that it might be considered impossible.

As to county commissioners, it was provided when they were first created in 1876, that each county should be divided by the first board into three compact districts and that one commissioner should "be elected from each of such districts by the vote of the whole county." There is no distinct statement in this statute on the subject of the residence of the county commissioner, but it would not be an unjustifiable inference that he should be a resident of the district from which he is elected at the time of his election; but it does not follow that he would become disqualified by subsequent removal from that district. To the best of my recollection in Bernalillo county some time in the 80's a county commissioner was elected who lived at the town of Bernalillo, and during his term of office removed to the town of Albuquerque, and served his term out without any objection being made.

The law on this subject remained without any change until 1909, when the legislature enacted, in the fifth subdivision of Section 3 of Chapter 36 of the Laws of that year, that a county office among other offices, would become vacant when the officer removes from the county in which he is elected, and in case of municipal offices when he removes from the town or city for which he is elected. This provision would extend to county commissioners, and under a wellknown rule of construction, that the expression of one thing is the exclusion of others, it must be held that removal from one part of the county to another part would not disqualify a county commissioner.

The only other language to be considered in connection with this matter is the provision to be found in Section 13 of Article V of the state constitution which provides that "all district, county, precinct and municipal officers shall be residents of the political subdivisions for which they are elected or appointed." There may possibly be some difference of opinion as to whether this provision goes beyond a requirement that the officers must be residents of the subdivisions for which they are elected at the time of the election and makes their residence qualification a continuing one. I am of opinion, however, that it merely refers to the necessity of such residence at the time of election. Moreover, as to county commissioners it might be difficult to say that they were elected for their respective districts, as they are officers of the whole county, and it would seem more reasonable to say that they are elected for the whole county, although from different districts.

My conclusion is as hereinbefore stated, in substance, that a county commissioner, once elected and qualified, does not lose his right to the office by a change of residence unless he removes entirely from the county.