

## Opinion No. 14-1324

September 16, 1914

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. Bronson M. Cutting, Chairman, State Progressive Committee, Santa Fe, New Mexico.

### **CANDIDATE FOR ELECTION.**

Eligibility of candidate for election to house of representatives.

### **OPINION**

{\*182} Your letter of the 14th inst. was received yesterday, but I have been unable to find time to answer until now. You enclose a letter to you from one of your precinct chairmen who desires to get an opinion from me upon the question as to whether a nominee for the legislature is eligible.

As I gather from that letter, it appears that the candidate in question is a native of New Mexico which has been his recognized home throughout his life, and that he has actually lived here except during the time he attended as a student in the University of Southern {\*183} California and at Harvard. It appears also that while he was a student at Harvard, he voted at a state election in Massachusetts in 1910 and it is now claimed that he thereby lost his citizenship in New Mexico.

I am not prepared to say that the mere fact that this gentleman voted in Massachusetts in 1910 caused him to lose his citizenship in New Mexico, but if he contends that notwithstanding that fact he continued to be a citizen of New Mexico for the reason that he always intended to preserve his citizenship here, the fact that he so voted in Massachusetts would be very embarrassing to say the least.

Under our constitution, in order to be eligible as a candidate for office, the person must be a legal resident of the state and a qualified elector therein, as is shown by Section 2 of Article VII of the Constitution, while Section 1 of the same article declares that every male citizen of the United States over the age of 21, who has resided in New Mexico twelve months, in the county ninety days and in the precinct in which he offers to vote, thirty days, shall be qualified to vote at all elections for public officers. I assume from what is said in the letter which you enclosed that this particular candidate has not been actually physically resident in New Mexico for the last twelve months and his claim still to be a citizen and a qualified voter here must be based on another ground. Section 4 of Article VII of the Constitution says:

"No person shall be deemed to have acquired or lost residence by reason of his presence or absence while employed in the service of the United States or of the state, nor while a student at any school."

This might well apply to the absences of the candidate in question while in attendance upon universities in other parts of the country and if there were no complication arising from his having voted elsewhere, I would have no hesitation in saying that he is now a voter of New Mexico.

It is quite impossible to state any comprehensive and accurate definition of what constitutes residence so as to qualify a man to be a voter which would be applicable to all cases. Residence is largely a matter of intention, but a mere declaration of intention on the part of the citizen would not be sufficient if inconsistent with the facts and his actions. A man may be physically absent from his place of residence without losing his rights as such a resident. It cannot be held that state officers, for instance, who are by the constitution required during their terms of office to reside at the state capital, lose their rights as residents and voters of the counties in which they formerly resided if they desire and intend to retain such residence for voting purposes. There are thousands of persons employed in the government offices at Washington who go home to the different states from which they have come in order to vote at elections, although many of them have had their actual residence and homes in Washington and no place of abode in the states where they vote. If, however, citizens in the District of Columbia now had a right to vote for anything and any of these gentlemen should vote there, it would be a strong indication of an intention to change the legal residence for voting purposes. In the present case, this {\*184} candidate may urge that he never had intended to lose his legal residence in New Mexico, but in that case he would be put in the unfortunate position of having exercised a right of suffrage in Massachusetts where the law requires residence within the state for not less than one year in order to give the right to vote.

You will remember also that the House of Representatives is the sole judge of the election and the qualifications of its members and that there is no power on earth to review the decision of that body, and if the House should reject your candidate, if elected upon the ground that he was not a legal resident of New Mexico so as to be entitled to vote and hold office, that would be the end of the whole matter. It does seem to me that the fact that he voted in Massachusetts in 1910 is inconsistent with his claim of continued residence and citizenship in New Mexico and that a hostile House would deem that sufficient evidence to justify his exclusion.

I herewith return the letter from your precinct chairman.