

Opinion No. 14-1360

October 8, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Mr. E. Abrego, San Marcial, New Mexico.

ACEQUIA ELECTION.

Votes at an acequia election shall be in proportion to the interest of the voters in the ditch. Right of a person convicted of a felony to vote at such election. Licenses by justice of the peace for bailes.

OPINION

{*221} I have today received your letter of yesterday, in which you ask for my opinion on three separate questions, which I will attempt to answer to the best of my ability.

Your first question is as to whether a man, who is a citizen, and owner of cultivated land, can vote three or four times in acequia elections. The only way that the owner of land can have more than one vote, or a greater vote than other owners, would be on account of his having a greater amount of land under the acequia, or a greater number of water rights. You will see by reference to Section 10 of the Compiled Laws, that persons having water rights in the acequia, are to be allowed to vote, and the vote shall be in proportion to the interest of the voter in the water, or in proportion to the number or amount of his water rights. This section was amended by Section 2 of Chapter 32 of the Laws of 1903, which declares that all votes shall be in proportion to the interest of the voter in the ditch or water, or in proportion to the number or amount of his water rights, which, for election purposes, shall not exceed the land under irrigation the outgoing year. Under these provisions, it is the duty of the acequia commissioners to make rules and regulations for the election, and if they should, for instance, make a rule that each owner should have one vote for each acre of land irrigated by him, then it is plain that a man with five acres would have five votes, and a man with half an acre would have but half a vote. The commissioners might make different rules, but it is evident that some owners must have the right to more votes than others.

You further ask whether a man who has served a term in the penitentiary, and who is an owner of property, can vote in acequia {*222} elections. This presents a question as to which I am not at all certain. The Constitution of the state provides, in Section 1 of Article VII, in effect, that persons convicted of a felonious crime, unless restored to political rights, are not qualified to vote at elections for public officers. I will not venture to predict whether or not the courts would hold that within the meaning of this section, mayordomos and commissioners of acequias are public officers, so that an ex-convict, who has not been restored to political rights, could not vote for them. If he owns land under the acequia and is entitled to water from the acequia for that land, he has such a

property right in the water of the acequia that, I believe, the courts would be very slow to hold that he should have no voice in the management of that acequia, of which he is, in part, an owner.

Your third question is as to whether a justice of the peace can give a license for bailes which are held for purposes of profit or gain, and you further say that you are of opinion that when an individual is compelled to pay money for the privilege of dancing, that indicates that the baile or dance is one held for profit or gain. I think there can be no doubt that you are correct in this opinion, and I believe that for such dances a justice of the peace can issue a license. You will not find a statute authorizing this in the Compiled Laws of 1897, as it was omitted by some mistake. I had occasion to examine this a number of years ago, and reached the conclusion that such a license must be had in order to give dances for profit or gain, or in connection with any place where liquors are sold.