

## Opinion No. 14-1402

December 24, 1914

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

**TO:** Mr. John L. Lobb, Willard, New Mexico.

### **CITIZENSHIP.**

Residence required of citizen to enable him to vote or hold office.

### **OPINION**

{\*263} I have just received your letter of yesterday in which you say you are writing me to find out if you are a citizen of the State of New Mexico, entitled to vote and eligible to the office of justice of the peace, having been away from the state for eighteen months, returning on the first of last October. You say that you did not vote, nor attempt to vote, during your absence, and that you had lived here seven years prior to going away.

There can be no doubt that if you are an actual resident of New Mexico, you are a citizen of the state, but as to whether you are now entitled to vote or to hold office is not clear from what you write. The constitution of the state in Section 1 of Article VII gives the right to vote to every male citizen of the United States over the age of twenty-one who has resided in New Mexico twelve months, in the county ninety days, and in the precinct thirty days next preceding the election, and Section 2 of the same article declares that all such citizens who are entitled to vote shall be qualified to hold any public office in the state except as otherwise provided in the Constitution.

It is quite impossible to state any comprehensive and accurate definition of what constitutes the required residence so as to be applicable to all possible cases. Residence is largely a matter of intention, although a mere declaration of intention would not be sufficient evidence if inconsistent with other facts. A man may be physically absent from his place of residence without losing his rights as a resident. Under the state constitution, state officers are required during their terms of office, to reside at the state capitol, and there might be cases where the state officer would retain no place of abode in the county of which he had been a resident and voter and yet he would not be held to lose his residence and right to vote in that county if he desired and intended to retain his legal residence there.

If you went away with the intention of being temporarily absent only and always had an intention to return to New Mexico and not to lose your residence and status as a citizen here, I would say {\*264} that you are now entitled to vote or to hold office, but if your intention really was to abandon your residence in New Mexico and your return was due to a change of that intention, then you have not been here long enough since your return to vote or hold office.