

Opinion No. 15-1516

May 5, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. J. M. Poss, Cloudcroft, New Mexico.

Office of county commissioner does not become vacant if incumbent moves out of the precinct.

OPINION

{*103} I have today received your letter of the 3rd instant in which you ask me, in substance, if the office of county commissioner becomes vacant when the incumbent of that office moves out of the precinct in which he was elected and which he represented.

The county commissioners are not elected by precincts, but are elected by the vote of the people of the whole county, and each is {*104} so elected from one district, the county being divided into three commissioner districts. In the original statute of 1876, providing for county commissioners, there is no distinct statement on the subject of the residence of the commissioners, and in the consideration of any such matter it should be borne in mind that unless made so by Constitution or statute, residence in any particular place is not a necessary qualification to hold office.

In 1909 the legislature, in the fifth sub-division of Section 3 of Chapter 36 of the laws of that year, provided that a county office would become vacant when the officer removes from the county in which he is elected. This would indicate a legislative construction that removal from the district for which the county commissioner has been elected would not create a vacancy, unless he, at the same time, moved out of the county.

There is a constitutional provision on this subject in Section 13 of Article V of the Constitution, which provides that:

"All district, county, precinct and municipal officers shall be residents of the political sub-division for which they are elected or appointed."

There might be some difference of opinion as to whether this provision goes beyond a requirement that the officers must be residents of the sub division for which they are elected at the time of the election, or makes their residence qualification a continuing one. I am of opinion that it merely refers to the necessity of such residence at the time of election. There is a further consideration that it might be held that county commissioners are not elected for districts, but for the whole county. I have no doubt that the commissioner, once elected and qualified, does not lose his right to the office by change of residence, unless he removes entirely from the county.

You further ask if such an office becomes vacant and subject to being filled by appointment of the Governor, must the person appointed be of the same political faith as his predecessor. There is no such limitation upon the power of the Governor in the exercise of the power of appointment to fill a vacancy in the office of county commissioner.