

Opinion No. 16-1764

March 27, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Hon. William C. McDonald, Governor of New Mexico, Santa Fe, N. M.

Vacancy in office of county commissioner must be filled by appointment of a resident of the commissioner district from which the predecessor was elected.

OPINION

{*335} Your letter of the 23rd instant asking whether the law requires you to appoint a successor to fill a vacancy in the office of county commissioner, from the district of the county represented by the former incumbent, or whether the appointment can be made from any part of the county legally, was received while I was absent from Santa Fe, having returned last night, which will account for my not having sooner answered.

Considering the legislation to be found in Section 1190 of the Codification, together with Section 13 of Article V of the Constitution, I am of opinion that such an appointment must be made of a resident of the same district from which the former incumbent was elected. Section 1190 provides that one commissioner shall be elected from each of the commissioner districts by the votes of the whole county, but is silent as to any similar requirement as to a person appointed to fill a vacancy, but the constitutional provision above referred to requires that all county officers shall be residents of the political subdivisions for which they are elected or appointed. This must be held applicable to appointments to fill vacancies in the boards of county commissioners, authority as to which is conferred upon you by Section 4 of Article XX of the Constitution. It seems quite clear that the person so appointed must, at the time of appointment, be a resident of the commissioner district from which his predecessor was elected. Were it not for that constitutional provision I would reach a different conclusion.