

## **Opinion No. 18-2149**

December 11, 1918

**BY:** C. A. HATCH, Assistant Attorney General

**TO:** Messrs. J. Dalio Cordova, J. B. Cordova, County Commissioners-Elect, Taos County, Taos, N.M.

Sheriff, Constable, and Clerk May Be Elected County Treasurer, and Section 1278, Code of 1915, Making Them Ineligible is Not Valid.

### **OPINION**

We have your letter of the 7th wherein you ask our opinion relative to whether or not a man who was at the time of the election deputy sheriff of the county of Taos could lawfully be elected county treasurer; your question being occasioned by Section 1278 of the 1915 Codification. This section is as follows:

"No sheriff, constable, clerk or deputy thereof, shall be eligible to the office of county treasurer."

Standing alone it would seem that from the foregoing provision of the law a deputy sheriff could not be elected county treasurer. This is an old law, having been brought forward into the Codification from the Compiled Laws of 1897. It first appears in Kearney Code, Compiled Laws of 1865, Chapter 21, Section 16. Until the adoption of the Constitution this was probably the law, but in the adoption of the constitution we believe this law was abrogated, and is no longer of any force or effect. Section 2, Article 7, of the Constitution, provides in part as follows:

"Every male citizen of the United States who is a legal resident of the State and is a qualified elector therein, shall be qualified to hold any public office in the State, except as otherwise provided in this Constitution;"

As there is no exception in the Constitution with reference to the office of county treasurer, it is our opinion the foregoing provision controls, and that any male citizen of the United States who is a resident of this State and a qualified elector, is qualified to hold the office of county treasurer. Therefore we conclude your treasurer was lawfully elected, even though he may have been serving as deputy sheriff at the time of his election.