

Opinion No. 21-2999

June 7, 1921

BY: HARRY S. BOWMAN, Attorney General

TO: Mr. D. S. King. McIntosh, New Mexico.

Vacancy in Office County Surveyor.

OPINION

{*64} In reply to your letter of the 31st ultimo, asking if the Board of County Commissioners have authority to appoint a county surveyor, which office you have held since 1917, by reason of the failure of your elected successor to qualify, I would say:

The District Attorney is prescribed by law as the legal adviser for county officials, and you should submit this matter to him before applying to this office.

In view of the fact, however, that this office has frequently ruled upon the question as to when an officer ceases to hold the office to which he was elected or appointed, I will undertake to comply with your request for an opinion upon this matter.

Section 2 of Article XX of the Constitution provides:

"Every officer, unless removed, shall hold his office until his successor has duly qualified."

In my opinion, you are correct in your contention that you hold the office until your successor has qualified, and in view of his failure to qualify, you still hold the office of county surveyor and the Board of County Commissioners is without authority to appoint your successor.

The authority of the Board to appoint officials exists only when vacancies occur, and there is no vacancy so long as you continue in office by reason of the failure of your successor to qualify.

{*65} Regarding the question of the payment of another surveyor by the county to perform county surveying, the work that is prescribed to be done by the county surveyor, I would advise you that in my opinion, the County Commissioners have no such authority.

In a recent decision of our Supreme Court, it was held that where officers are provided by law to perform certain duties, Boards of County Commissioners have no authority to employ and pay other persons to perform such duties.

I would request, however, that you refrain from using this opinion for any purpose whatsoever until after you have written your District Attorney and advised him of the contents hereof and requesting his permission to use the same.

It is not the intention of this office to interfere with or encroach upon the jurisdiction and prerogatives of the District Attorneys.