

Opinion No. 26-3915

November 20, 1926

BY: FRED E. WILSON, Attorney General

TO: Mrs. Soledad C. Chacon, Secretary of State, Santa Fe, New Mexico.

You inform me that a question has arisen relative to the right of various candidates at the recent November election to take over their offices immediately following the issuance of the certificates of election. These offices involved are those that were filled by appointment of the Governor due to a vacancy. These offices are attorney general, commissioner of public lands, and corporation commissioner.

John W. Armstrong was elected Attorney General for the term beginning January 1, 1925, and ending January 1, 1927; Justiniano Baca was elected Commissioner of Public Lands for the term beginning January 1, 1925, and ending January 1, 1927; and Ed C. Tafoya was elected Corporation Commissioner for the term beginning January 1, 1925, and ending January 1, 1931. Each of these officials died during the year 1925, and the Governor filled the vacancies created in said offices by appointment.

§ 5, Article 5 of the Constitution, among other things, provides:

"Should a vacancy occur in any state office, except lieutenant-governor and member of the legislature, the governor shall fill such office by appointment, and such appointee shall hold office until the next general election, **when his successor shall be chosen for the unexpired term.**"

Thus it will be seen that under the above provisions of the Constitution the appointees for the offices above mentioned were authorized to hold these offices until the next general election, at which time the Constitution contemplated their successors would be chosen for the unexpired term.

In reference to the office of Corporation Commissioner, it will be seen that the term of Ed C. Tafoya, deceased, will not expire until four years from January 1, 1927. Both political parties nominated candidates to fill this unexpired term in conformity with § 5, Article 5 of the Constitution, and under the provisions of that section the candidate who receives the certificate of election is entitled to assume the duties of the office immediately.

However, with reference to the offices of Attorney General and Commissioner of Public Lands, the facts are different. In neither case was there a candidate nominated or elected at the general election in November of this year to fill the unexpired terms of General Armstrong or of Justiniano Baca. It is true that under the provisions of § 5, Article 5 of the Constitution the appointees of the Governor who are now holding these offices had the right to hold only until the general election, but in view of the fact that no

successor was chosen at that general election for the unexpired term, the incumbents are entitled to hold these offices until their successors have duly qualified. § 2, Article 20 of the Constitution provides that every officer, unless removed, shall hold his office until his successor has duly qualified. In reference to these two offices the candidates at the last general election were candidates for the term beginning January 1, 1927, and not candidates to fill the unexpired terms which ended on January 1, 1927.

While the expression of this opinion affects my own right to continue in the office of Attorney General for a little more than a month longer, I do not feel greatly embarrassed by giving it. At the time it is written the result of the general election in reference to the candidates for Attorney General is still a matter of doubt, but I do not think either of the candidates for this office will disagree with me as to the correctness of the opinion.