

Opinion No. [30-21]

August 14, 1930

BY: J. A. MILLER, Assistant Attorney General

TO: Mr. James N. Bujas, Assistant District Attorney, Carlsbad, New Mexico.

ELECTIONS -- Residence required of electors; duties of registration boards. Sec. 1, Art. VII, Const. § 41-210, Code 1929. § 41-217, Code 1929.

OPINION

I have yours of the 11th inst. in which you ask the following question:

"Is a person owning property in New Mexico, and by reason thereof in this State a good bit of the time, but who keeps his family and household goods in the State of Texas, qualified and entitled to registration and the right to vote in this State?"

The qualifications of an elector in this state are specified in Article VII, section 1 of the State Constitution and again in section 41-210, Codification of 1929, from which it appears that every citizen of the United States over the age of twenty-one years who has resided in the State twelve months, in the county ninety days and in the precinct in which he offers to vote thirty days next preceding the election, with certain exceptions, is a qualified elector.

An examination of the sections to which reference has been made discloses that no property qualification exists. The ownership of property or the lack of ownership does not enter into the question at all unless perhaps there might be cases in which ownership of property and the nature thereof might be some indication of the intention of the owner as to residence. It has been held in many states that the term "residence" as used in constitutional and statutory provisions relating to the qualifications of electors is synonymous with home or domicile, denoting a permanent dwelling place to which a party when absent intends to return. A sojourn in the place however long without the intention of making it a permanent home will not qualify the sojourner as an elector. One must have a residence somewhere and when once established that residence is presumed to continue until a new one is established. Neither may one have more than one legal residence at one time.

As you say in your letter, residence being a matter of intent in the mind of the individual is hard to prove by extraneous evidence. However, it has been held that one cannot by intention alone fix his dwelling place. The word means not only intention to reside in a fixed place but also personal presence in that place coupled with conduct indicative of such intention. See 20 C. J., page 68, section 26.

"Any person who shall willfully make any false statement to the board of registration in order to secure the registration of himself or another shall be guilty of a felony and punished by imprisonment in the penitentiary for one year."

Section 41-217, Codification of of 1929.

Registration boards do not seem to have much option in the case of a person who presents himself and takes the necessary oath as to his qualifications as an elector although the person who willfully makes a false statement to the board in order to secure the registration lays himself liable to prosecution and imprisonment. As you observe in your letter, the privilege of franchise is clearly defined by the laws of this state. No opinion from this office can change the law in that respect, the constitution having fixed the qualifications even the legislature is without authority to change such qualifications. Unauthorized registration, of course, does not entitle one to vote. Anyone who offers to vote in willful violation of law should be challenged and prosecution should follow any unlawful voting.