

Opinion No. 36-1440

October 2, 1936

BY: FRANK H. PATTON, Attorney General

TO: Mr. Martin Lopez, County Clerk, Gallup, New Mexico.

{*141} There has been referred to this office an inquiry from you as to the eligibility to election of a person who served two terms as County Commissioner from 1930 to 1934 and who, after the expiration of his elected term on January 1, 1935, has continued to hold office for the reason that his successor died and no appointment to fill the vacancy was ever made.

Section 2 of Article X of the New Mexico Constitution provides as follows:

"The county officers should be elected for a term of two years, and after having served two consecutive terms, shall be ineligible to hold any county office for two years thereafter."

We fail to find any decided cases squarely upon the point raised by you in your inquiry. We do find authorities in other states to the effect that an officer who holds over after his term of office expires is not holding office by virtue of his elected term and that the period of hold-over does not constitute a part of the term for which he was elected. We believe that this is a correct view of the law {*142} although there are a few cases indicating a contrary view. We are of the opinion that the Constitutional provision above quoted means that the county officer is ineligible to hold any county office for two years after the expiration of the term for which he was elected. Therefore, if the hold-over period is not a part of the term for which the officer was elected, he would be eligible at the present time to run for re-election to this office.

We wish to impress upon you that this situation has never been before the Supreme Court of this state and we can not say what position the Courts here would take on the matter. We have given you our opinion only as to what the law is and it would have no binding effect in the event the question is raised in the Courts.

By J. R. MODRALL,

Asst. Atty. General