

Opinion No. 45-4699

April 26, 1945

BY: C. C. McCULLOH, Attorney General

TO: W. T. Scoggin, Jr. District Attorney Third Judicial District Las Cruces, New Mexico

{*53} I have your letter of April 6, 1945, wherein you request an opinion of this office on the following two questions:

"1. Is it necessary for a constable to make two bonds, one as pound keeper and one as constable, or would one bond suffice for both?"

"2. If you rule that two bonds are mandatory is it necessary that he make a bond as pound keeper or may he serve as constable without serving as pound keeper?"

In answer to your first question, I call your attention to Section 38-107 of the New Mexico 1941 Compilation which provides that a constable shall obtain a bond conditioned upon performance of his duties as constable. Section 49-1625 of the 1941 Compilation creates the office of pound keeper in precincts lying wholly or partially within any irrigation {*54} district organized for the purpose of cooperating with the government of the United States under the terms of certain federal laws, and provides that the constable of each such precinct shall be ex officio pound keeper of such precinct. It is noted that a distinct office is created which the constable of each precinct involved automatically holds.

Section 49-1626 of the New Mexico 1941 Compilation provides that the pound keeper, before entering upon the discharge of his duties, shall provide a sufficient bond in the sum of \$ 500.00, conditioned upon the faithful performance of his duties as pound keeper.

We therefore have two specific statutes requiring two separate bonds conditioned upon the performance of separate statutory duties. In view of the foregoing, it is my opinion that in answer to your first question, two bonds must be furnished.

In answer to your second question, I call your attention to Section 49-1634 of the 1941 Compilation in addition to the two previous sections already referred to in answers to your first question concerning the office of pound keeper. Section 49-1634 provides, among other things, that if any constable shall fail to make the bond required by Section 49-1626 within thirty days or fails to properly discharge his duties, upon a complaint to the district judge and upon establishment to the satisfaction of the judge of facts substantiating such charges, an Order shall be entered removing such constable from office, and the board of county commissioners shall fill the vacancy so created by appointment. This section indicates a legislative intent that the constable becomes

automatically pound keeper regardless of the filing of a bond; otherwise, it would be unnecessary to remove him upon his failure to file a bond within thirty days.

It is further noted that the above section is the only section providing a manner for the appointment of a person other than the constable. Further, under our Constitution, every officer holds his office until his successor duly qualifies. See Article 20, Section 2 of the New Mexico Constitution. The pound keeper is made an officer by statute. See Section 49-1625 of the New Mexico 1941 Compilation. Therefore, in answer to your second question, it would appear necessary to comply with the provisions of Section 49-1634 of the 1941 Compilation and remove the constable and have the county commissioners fill the vacancy by appointment before the constable will be relieved of his duties as pound keeper, together with all statutory rights, obligations and duties, including the requirements for a bond.

By HARRY L. BIGBEE,

Asst. Atty. General