

Opinion No. 46-4923

July 9, 1946

BY: C. C. McCULLOH, Attorney General

TO: C. R. Anderson Assistant District Attorney Carlsbad, New Mexico

{*247} In your letter dated July 5, 1946, you ask two questions as follows:

"(1) Assume that an otherwise qualified voter is registered in Voting Division A of Precinct 1, and resides in Voting Division B in Precinct 1; can this voter legally vote in Voting Division A of Precinct 1, where he is registered, though he is an actual resident of another district of the same precinct?

"(2) Assume that a voter resides in Voting Division A of Precinct 1, and he is selected to become an election official of Voting Division B in Precinct 1; can this person legally act as an election official in a voting district where he does not actually reside, although he is a registered voter in another voting district of the same precinct?"

I am enclosing a copy of Opinion No. 4576 in which the first question seems to have been answered.

In answer to your second question, Article 5, Section 13 of the state Constitution provides as follows:

"All district, county, precinct and municipal officers, shall be residents of the political subdivisions for which they are elected or appointed."

The Supreme Court, in the case entitled *Gibbany v. Ford*, 29 N.M. 621, held that a ward within a municipality, set up merely to facilitate {*248} in the conduct of elections in such municipalities, is not a political subdivision and that the Legislature cannot require residence within a given ward as a prerequisite for holding the office of alderman to represent a given ward. By analogy, it would seem that an election district or voting division within a precinct is not a political subdivision, since an election district is established merely to facilitate the conduct of elections and does not perform any governmental functions sufficient to constitute such election district a political subdivision.

Election officials are public officers, appointed for the purpose of conducting a particular election. If there is only one voting division in a given precinct, the election officials are unquestionably precinct officers. The fact that election districts may be set up in a precinct does not change the nature of the office of election officials in the precinct merely because additional officials are appointed to facilitate the conduct of elections. For that reason, the election officials in election districts remain precinct officers of the precinct in which such election district is a part.

Section 56-316 of the 1941 Compilation, in connection with qualifications of election officials, uses this language:

"All election officials, including challengers, and watchers, shall be legal residents of the precinct wherein the election at which they serve is held."

This requirement is in conformity with the section of the Constitution above quoted and it is noted that the Legislature does not attempt to require election officials to be residents of a particular election district or voting division within a given precinct.

It is true, under Section 56-315, that the Legislature undoubtedly contemplated that election officials in a given election district should be residents of such an election district. Under said section county chairmen are authorized to submit lists of names of qualified electors in each election district who are registered in such district and from this list, the county commissioners are required to appoint judges of election and counting judges. However, in the event no such list is submitted by the county chairman, or in the event no qualified elector of a dominant political party is a resident of a given election district, the county commissioners may proceed to appoint election officials to represent such party from among the residents and qualified electors of the precinct within which such election district lies.

It is, therefore, my opinion that a person may legally act as an election official in a voting division or election district in which he does not actually reside, provided he is a registered voter affiliated with the party he represents, and a resident of the precinct of which such voting district or election district is a part.