



Attorney General of New Mexico

GARY K. KING
Attorney General

ALBERT J. LAMA
Chief Deputy Attorney General

October 31, 2007

The Honorable Stuart Ingle
New Mexico State Senator
2106 West University Drive
Portales, NM 88130

Re: Opinion Request-Term Limits for Elected County Officials

Dear Senator Ingle:

You requested our advice regarding whether Article X, Section 2(D) of the New Mexico Constitution prohibits an elected county official from seeking another county office if the official left his or her current office before the expiration of the officer's second consecutive term. As discussed in more detail below, we conclude that the constitution prohibits a person from serving more than two consecutive terms as a county officer regardless of whether the elected official resigns from office before the expiration of the second term.

Article X, Section 2(D) provides:

All county officers, after having served two consecutive four-year terms, shall be ineligible to hold any county office for two years thereafter.

This provision prohibits a person from serving more than two consecutive terms as a county officer. There must be an interim period of two years before an elected official who has served two consecutive four-year terms is eligible for another county office.

In N.M. Att'y Gen. Op. No. 59-115, this office concluded that a county school superintendent who, prior to the end of his second term, had no schools to administer, was nevertheless prohibited from seeking another elected county office. The opinion interpreted Article X, Section 2 "to mean that a person elected for two consecutive... terms to a county office is ineligible to seek a third consecutive county elective position." The person is ineligible "irrespective of whether or not he resigned prior to the completion of his second term". As stated in Opinion No. 59-115, "to apply any other meaning to this section would make a mockery of the intent of those who framed this section". Opinion No. 59-115 was cited favorably by the

New Mexico Supreme Court in *Stephens v. Myers*, 102 N.M. 1, 690 P.2d 444 (1984), which addressed a county sheriff who was elected, but resigned for eight minutes to clear up a technicality in his qualification for office. He was then immediately appointed to serve the remainder of his term and he was elected to serve a complete second term as sheriff. When he sought a third term his eligibility was challenged. The Court held that the sheriff had served two consecutive terms and was ineligible under Article X, Section 2 to seek reelection. The Court explained that the sheriff "was elected to serve" his first term "and he did serve that term but for eight minutes. The fact that he resigned and was appointed eight minutes later does not change the fact that he actually served two full terms." 102 N.M. at 2 (emphasis in original).

In your request, you stated that an elected official resigned before the expiration of his second term. Based on the 1959 Attorney General Opinion and the New Mexico Supreme Court decision in *Stephens*, despite his resignation, prior to the expiration of his term of office, the official was elected to two consecutive terms. Thus, his resignation is immaterial for purposes of Article X, Section 2(D) and the official must wait two years before he will be eligible to hold another elected county office.

Later amendments to Article X, Section 2(D) do not affect our interpretation. An amendment in 1992 changed the elective term period from two to four years. In 1998, another amendment substituted "county office" for "public office". Neither amendment altered the two-term prohibition.¹

Your request to us was for a formal Attorney General's Opinion on the issue discussed above. Such an opinion would be a public document available to the general public. Although we are providing you our legal advice in the form of a letter instead of an Attorney General's opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the public. If there are any further questions that I can assist you with, do not hesitate to contact me.

Sincerely,



LESLEY J. LOWE

Assistant Attorney General

cc: Albert J. Lama, Chief Deputy Attorney General
Elizabeth A. Glenn, Civil Division Director
Zachary A. Shandler, Civil Division Deputy Director

¹We also note that a proposed amendment to allow county officials to serve an unlimited number of consecutive terms was proposed and defeated in 2000.