

March 3, 1950

Donald E. Nelson, M.D.
Chairman, Board of Juvenile Institutions
Safford, Arizona

Dear Doctor Nelson:

We have before us your telegraphic request for our opinion as to:

" * * * what constitutes a male citizen of the State of Arizona?"

Generally the term "male" has been defined as follows:

"Of the masculine sex; of the sex that begets young; the sex opposed to the female."

Bouvier's Law Dictionary
Black's Law Dictionary

"Designating, or of or pertaining to, a man or human being of the sex which begets young * * * opposed to female."

Webster's International Dictionary

In construing the term used in a statute it has been held that the right to hold office, given to males of the age of twenty-one years, did not extend to women in spite of the fact that another section of the same code provided that words used in the statute importing masculine gender should include feminine and neuter, similar to our Section 1-103(3) ACA 1939. State v. Davidson, 92 Tenn. 531, 22 S.W. 203.

In holding that "male" did not include women, another court stated:

" * * * If we should follow that authority in ignoring the distinction of sex, we do not perceive why it should not emasculate the constitution itself and include females in the constitutional right of male suffrage and male qualification. Such a rule would be one of judicial revolution, not of judicial construction. * * * "

In re Godell, 39 Wis. 232, 242.

The word "citizen" has been defined as follows:

"A member of a state; a person native or naturalized, of either sex, who owes allegiance to a government, and is entitled to reciprocal protection from it. * * * "

Bouvier's Law Dictionary

"A member of the civil state entitled to all its privileges."

Cooley, Const. Lim. 77

" * * * one who is entitled to every right enjoyed by anyone, unless there be some affirmative declaration to the contrary, by some authority clothed with the power, under our form of government, to make the exception."

White v. Clements, 39 Ga. 232, 261.

The term has come to us from the Roman Law; in the Roman government it appears to have been used to designate a person who had the freedom of the city, and the right to exercise all political and civil privileges of the government. Thomasson v. State, 15 Ind. 451, 17 L. Q. Rev. 270.

Because the construction placed upon any word or phrase may vary, depending upon where and how it is used, our answer to your request is necessarily based upon the assumption that such request is directed at the use of the phrase "a male citizen of the State of Arizona" in Section 47-406, ACA 1939.

The term "citizen" when used in a statute to designate persons upon whom are conferred duties or rights ordinarily limited to "electors", is generally construed to mean "elector". Thomasson v. State, 15 Ind. 449; Scarborough v. Eubanks, 52 S.W. 569; School Dist. No. 11 v. School Dist. No. 20, 395 S.W. 850, and Wray v. Harrison, 42 S.E. 351.

As was pointed out in a previous letter to the Board of Juvenile Institutions, it is our opinion that the Superintendent of the Industrial School is an "officer" of the State of Arizona.

An officer of the State of Arizona is not only ordinarily an "elector", but such a qualification is mandatory under our Constitution:

"The provisions of this constitution are mandatory, unless by express words they are declared to be otherwise."

Arizona Constitution, Art. 2, Sec. 32.

"Every person elected or appointed to any office of trust or profit under the authority of the state, or any political division or any municipality thereof, shall be a qualified elector of the political division or municipality in which said person shall be elected or appointed."

Arizona Constitution, Art. 7, Sec. 15.

Therefore the Legislature, in requiring that the Superintendent of the Industrial School be "a male citizen of the State of Arizona" (Section 47-406, ACA 1939), apparently meant that such person should be "a qualified elector" of the State of Arizona.

"No person shall be entitled to vote at any general election, or for any office that now is, or hereafter may be, elective by the people, or upon any question which may be submitted to a vote of the people, unless such person be a citizen of the United States of the age of twenty-one years or over, and shall have resided in the state one year immediately preceding such election.
* * *"

Arizona Constitution, Art. 7, Sec. 2.

By reason of the foregoing, it is our opinion that "a male citizen of the State of Arizona" as used in Section 47-406, ACA 1939, means a man citizen of the United States who has been a bona fide resident of the State of Arizona for a period of one year immediately preceding his appointment as Superintendent of the Industrial School.

Very truly yours,

FRED O. WILSON
Attorney General

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