

## Opinion No. 50-5306

July 5, 1950

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** Honorable Luis Encinias County School Superintendent Las Vegas, New Mexico

{\*161} Some time ago you requested an opinion from this office as to whether the appointment of Fidel C. Gonzales as member at large was a valid appointment, in view of the holding of the Judge that either Rosario Lucero or Jose C. Maestas holds the appointment at large.

I have checked the records of the Superintendent of Public Instruction, Mr. Rose, and the records of his office show that on July 15, 1949, Charles L. Rose and Judge Luis E. Armijo, in writing, appointed Fidel C. Gonzales as a member at large to fill the vacancy of Fidencia C. Gonzales, a resident of San Miguel County, but who was not appointed for any particular district or at large.

On August 19, 1949, the three members of the appointing board, in writing, vacated all appointments of the Board of Education of San Miguel County and re-appointed Fidel C. Gonzales as a member at large of said San Miguel County Board of Education.

Subsequently a suit in quo warranto against Jose C. Maestas and Rosario Lucero questioning {\*162} the validity of their appointments as members of the Board of Education of San Miguel County was decided by Judge Carmody. This proceeding did not question the validity of Fidel C. Gonzales' appointment and the validity of his appointment has never been tested in court.

The judgment and order of Judge Carmody was not appealed from and stands as the law as far as the records show up to date. However, under the facts, School District No. 2 of San Miguel County is without representation on said board and three of the members of the present board, Fidel C. Gonzales, Jose C. Maestas and Rosario Lucero are all residents of District No. 1 and, since the judgment of Judge Carmody held that either Jose C. Maestas or Rosario Lucero is the member at large, the appointment of Fidel C. Gonzales is also as a member at large on said board, and which of these members shall be the member at large will be a question for the court to decide.

I call your attention to the first section of Chapter 70, Laws of 1945, which reads as follows:

"County boards of education shall consist of five members, who shall be legally qualified electors, and no more than three of whom shall belong to the same political party. One of said members shall be a resident of and selected from each of the three county commissioners' districts. One shall be selected at large, and the fifth member shall be

the County School Superintendent, and not more than one of such appointed members shall reside in any incorporated municipality." \* \* \*

Under the facts Fidel C. Gonzales holds a valid appointment as a member of the Board, the least that can be said of his appointment is that he is a de facto member of the board until such time as a court of competent jurisdiction decides as to the validity of his appointment.

Volume 42, Am. Jur., § 143, page 983, reads as follows:

"Jurisdiction to determine title to public office belongs exclusively to courts of law, and the remedies generally resorted to for that purpose are an election contest and quo warranto or its statutory equivalent. A statutory action to try title to office exists in some states. Its purpose is to attain the end reached by quo warranto or a writ of right against one who usurps an office."

In view of the facts in this case and the above statements of law, it is my opinion that a court of competent jurisdiction is the only tribunal that can determine the title and validity of Fidel C. Gonzales' appointment as a member of the Board of Education of San Miguel County, as he holds a valid and unanimous appointment from all three board members according to the records in the office of the Superintendent of Public Instruction of the State of New Mexico.