

## Opinion No. 50-5299

June 1, 1950

**BY:** Joe L. Martinez, Attorney General

**TO:** Honorable F. C. Gonzales State Representative c/o Las Vegas Furnishing Company

{\*154} Receipt is acknowledged of your letter dated May 18, 1950 in which you request an opinion as to whether or not, under Section 55-307 of the 1941 Compilation, a rural school supervisor of San Miguel County, New Mexico can or cannot legally be a candidate for the office of County School. Section 55-307 of the 1941 New Mexico Compilation reads as follows:

"Except with respect to independent and union high school districts, the county board of education shall have supervision and control of all rural schools and districts, and of sites, buildings, equipment and funds of said districts, with the power to employ and discharge all teachers and all school employees of said schools, subject to the limitations herein otherwise provided: provided, that the county board of education may, in its discretion, delegate to the county school superintendent the power to employ and discharge all teachers and school employees.

Said board may employ a rural school supervisor at the expense of the county, which supervisor shall be nominated by the county superintendent of schools and must be approved by the state board of education. Such supervisors must have a minimum of one (1) year of actual teaching in the elementary schools or supervisory experience of New Mexico and must have high school graduation {\*155} and at least a Bachelor of Arts degree or its equivalent from a fully accredited college or university, and at least fifteen (15) hours training in class room supervision. Such supervisor shall not be a member of the immediate family of the county school superintendent of the county for which such supervisor is appointed nor engage in any political activity and shall not be a candidate for any elective office during their term of office as such supervisor. Contracts involving the expenditure of more than two hundred dollars (\$ 200) shall be in writing. Contracts involving the expenditures of five hundred dollars or more shall be in writing, and upon scaled competitive bids, after notice and advertisement of such bids shall have been published once a week for four (4) consecutive weeks in some legal newspaper of general circulation in the county; provided notices and advertisement shall not apply to teacher's salaries. When plans and specifications for the erection of school buildings shall have been changed, altered or revised after advertisement of bids for the construction thereof, the governing boards shall be required to readvertise for new bids, provided that it shall not be necessary to readvertise for bids to cover minor alterations or changes in plans required to correct errors or omissions in the original specifications."

The above quoted statute is mandatory and this office so held in Opinion No. 4475, 1943-1944 Opinions of the Attorney General, dated March 9, 1944, copy of which I enclose.

You state in your letter that the San Miguel County Board of Education gave the rural school supervisor a leave of absence for thirty days. However, Mr. Luis Encinias, in another letter requested an opinion and enclosed a copy of resignation of the present rural school supervisor dated May 1, 1950, and which was to take effect the same day.

Assuming the resignation of the rural school supervisor will be accepted by the board and that said supervisor has abandoned the office and her duties as such rural school supervisor, her resignation is complete.

Volume 37 of words and phrases, on page 330 says:

"To constitute a 'resignation' it must be unconditional, and with intent to operate as such. There must be an intention to relinquish a portion of the term of office accompanied by an act of relinquishment. It is to give back, to give up in a formal manner, an office; any act of an officer by which he declines his office, and renounces the further right to its use. State v. Huff, 87 N.E. 141"

Not assuming that the resignation of the San Miguel County rural supervisor has been accepted, Volume 37 of Words and Phrases on page 330 says:

"Resignation, is the act of giving up; it is the act of an officer which declines his office and renounces the further right to use it. Hence, independent of statute and under Comp. Laws, Secs. 1814-1816, authorizing any officer to resign by transmitting the resignation to prescribed officers, and declaring that the office shall become vacant on the resignation of the incumbent, an acceptance is not necessary to effect a resignation." See State v. Murphy, 97 P. 391-395.

Reading from the opinion in the case above quoted, State v. Murphy, on page 394, the court {\*156} said:

"It could hardly be said that one wasn't 'at liberty to resign', if such resignation, to be effective, was subject to the will of some other officer or body."

It is my understanding that your rural school supervisor has already filed for the office of school superintendent, which is an incompatible office with that of rural school supervisor. See state ex rel Biggs v. Corley, Lieutenant Governor, reported in Vol. 172, Atlantic Reporter, on pages 415 to 423. This case held acceptance of office incompatible with office already held operates as a 'resignation', and the word resignation, or 'renunciation' of first office.

In view of the above citations, it is my opinion that an effective resignation was submitted by the rural school supervisor and her candidacy for the office of County School Superintendent is legal.