

Opinion No. 55-6125

March 10, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Terrance L. Dolan, Assistant District Attorney, Second Judicial District,
Albuquerque, New Mexico

In your letter dated March 3, 1955, you request an opinion concerning § 73-5-1, 1953 Comp., relative to county school superintendents. This section provides that such officer shall take office on the first day of January following his election and before entering upon the discharge of the duties of his office shall make and file his oath of office. The section further provides that within 30 days after receiving his certificate of election or appointment, he shall give an official bond in the sum of \$ 2,000. You are wondering what the result may be as to such office if the person elected fails to take office on the first day of January following his election and fails to post bond within 30 days after receiving his certificate of election and, in fact, does not post bond until February 15 following his election.

Article 20, Section 1, of the Constitution requires every person elected or appointed to an office to take and subscribe to an oath or affirmation before entering upon his duties. Article 20, Section 2, provides that every officer unless removed shall hold his office until his successor has duly qualified. Article 20, Section 3, provides that the term of office for state, county or district officers shall commence on the first day of January next after his election.

In view of these constitutional provisions, the language in the foregoing statute regarding the time for taking office means the time when the term of office of such person elected shall begin. If the officer fails to qualify, his predecessor, under the constitution, continues to hold the office until such time as he does qualify. In order to qualify, the constitution requires an oath of office and the statute, in addition, requires an official bond. Where both an oath of office and a bond are required, the officer does not qualify for the office until he has subscribed and filed his oath of office and also filed his official bond. See *Trust Co. vs. Bank*, 18 NM 589, p. 601.

Ordinarily the certificate of election of county officers is received before December 1 following the election and the 30-day provision would result in the bond being made not later than January 1, which would be necessary in order to qualify on January 1. However, if the officer does not qualify until after January 1, he is not entitled to assume the duties of the office until such time as he does qualify during his term of office.

By C. C. McCulloh

Assistant Attorney General