

Opinion No. 57-183

July 25, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Mr. E. M. Barber, District Attorney, Seventh Judicial District, Truth or Consequences, New Mexico

QUESTIONS

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The County Board of Education of Torrance County has its five members but:

Commissioner's District No. 1 is not represented on the Board;

Commissioner's District No. 2 has two representatives on the Board; and

Commissioner's District No. 3 has one representative on the Board;

1. Is such legally objectionable?
2. If so, what action, and by whom, should be taken to correct the matter?

CONCLUSIONS

1. No.
2. No action can be taken.

OPINION

ANALYSIS

Section 73-9-1, N.M.S.A., 1953 Compilation, dealing with the qualifications for membership on a county board of education is as follows:

"County boards of education shall consist of five (5) members, who shall be legally qualified electors, and no more than three (3) of whom shall belong to the same political party. **One (1) of said members shall be a resident of and selected from each of the three (3) county commissioners' districts.** One (1) shall be selected at large, and the fifth member shall be the county school superintendent, and not more than one (1) of such appointed members shall reside in any incorporated municipality. Said board shall be styled -- County Board of Education, and shall have power as such to sue and

be sued, contract and acquire and dispose of school property pursuant to law, together with all the powers and duties now vested in the county boards of education under section 55-807 of the 1941 Compilation (section 1, chapter 173, Laws of 1939 (73-9-7), and section 55-808 of the 1941 Compilation (section 4, chapter 96, Laws of 1927 (73-9-8), and all other laws now in force granting powers or imposing duties upon county boards of education." (Emphasis ours.)

At first glance, the requirement that three members shall reside in the three commissioners' districts is clear, yet we are of the opinion that such requirement runs directly afoul of Article V, Section 13, Constitution of New Mexico, which provides:

"All district, county, precinct and municipal officers, shall be residents of the political subdivisions for which they are elected or appointed."

The statute contains a requirement that three board members be residents of commissioner districts. Is this valid? We think not, since a county commissioner's district is not a political subdivision as is contemplated by Article V, Section 13, *supra*. Opinion of the Attorney General No. 5907, dated February 19, 1954.

It is enough then, under Article V, Section 13, that a public officer be a resident of his political subdivision. Can the Legislature validly superimpose additional qualifications?

The answer is found in **Gibbany vs. Ford**, 29 N.M. 621, 225 P. 577. In that case, a statute was before the Court attempting to require that municipal councilmen be residents of the ward from which they were elected, and which declared the consequences of non-residence. The Court held that a ward was not a political subdivision and consequently, the Legislature had no power to add the additional restriction on holding office. Yet, that is exactly what the Legislature, by Section 73-9-1 endeavored to do. The Court in **Gibbany vs. Ford**, *supra*, went on to point out how aldermen were not elected by the voters of the ward, but by the voting citizenry of the city at large. And so here, county school board members are not elected by the voters of any commissioners district, but by the voting citizenry of the county school district at large. Additionally, the Court clearly held that municipal wards are not political subdivisions, pointing out how no internal affairs of government are controlled by the people of a ward as such. In accordance with the **Gibbany Case**, we hold invalid the requirement of residence in a commissioners district set forth in Section 73-9-1, *supra*.

Gibbany vs. Ford, then went on to hold that residence in the municipality is enough. By analogy, it would then be enough that a member of a county board of education reside within the county school district, **if such is a political subdivision within the meaning of Article V, Section 13, supra.**

Returning to **Gibbany vs. Ford**, we find that the Court set forth the requirements of a political subdivision. In order to be such, the division must be formed or maintained for the exercise of some political power or powers within certain boundaries or localities,

and to whom the electors residing therein are accorded some degree of local self-government.

Now, applying such test to county boards of education, or more properly, to county school districts, it at once becomes apparent that such district is a political subdivision. It is formed or maintained to exercise a public function, to wit: jurisdiction over the public schools within that district. Further, Section 73-9-1 et seq., clearly vests certain policy making powers in the board, elected by the electors of the district. We hold that a county school district is a political subdivision and district as those terms are employed in Article V, Section 13, supra.

Such article and section of the Constitution is only applicable to officers. That school board members are officers see Opinion of the Attorney General No. 57-142.

Residence of the members within the county school district is enough, and you should take no action, as we assume that all five members of the Torrance County School Board reside within such district.