

Opinion No. 57-201

August 14, 1957

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

TO: Mr. Edward M. Hartman, Director, Department of Finance and Administration, P. O. Box 1359, Santa Fe, New Mexico

QUESTION

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1. Do the nepotism laws of the State of New Mexico prohibit the employment of the wife of a member of a board of education as clerk in the office of the superintendent of a school district?
2. May an individual who has members of his immediate family serving on a board of education be employed in a supervisory capacity in the schools (a non-teaching position)?

CONCLUSIONS

1. No.
2. Yes.

OPINION

ANALYSIS

Your questions call for our interpretation of Section 5-1-10, N.M.S.A., 1953 Comp., which states:

"It shall hereafter be unlawful for any person elected or appointed to any public office or position under the laws of this state or by virtue of any ordinance of any municipality thereof, to employ **as clerk, deputy or assistant, in such office or position**, whose compensation is to be paid out of public funds, any person related by consanguinity or affinity within the third degree to the person giving such employment, unless such employment shall first be approved by the officer, board, council or commission, whose duty it is to approve the bond of the person giving such employment: Provided, that this act shall not apply where the compensation of such clerk, deputy or assistant shall be at the rate of \$ 600 or less a year, nor shall it apply to persons employed as teachers in the public schools." (Emphasis ours.)

In Opinion of the Attorney General No. 5484, dated January 31, 1952, it was held that this identical Statute did not prohibit employment, by a county board of education, of the wife of one of its members to the position of janitress, since such would be neither clerk, deputy, nor assistant to the employing authority. Further, it was held that payment of her salary would accordingly be valid. Since the position contemplated by your first question is that of clerk in the Superintendent's Office, and not that of a clerk to the School Board, we do not deem her employment illegal.

In addition, for the same reasons as hereinbefore given, we do not find that Section 5-1-10, supra, prohibits employment of a person in a non-teaching, supervisory capacity, although members of his immediate family serve on the board of the school district.

We hold that neither of the above positions would constitute a ". . . clerk, deputy or assistant . . ." of the school board itself as those terms are employed in Section 5-1-10, albeit their duties would, perhaps in part, be clerical in nature.