

## **Opinion No. 57-43**

March 7, 1957

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

**TO:** Honorable E. M. Barber, District Attorney, Seventh Judicial District, Truth or Consequences, N.M.

### **QUESTIONS**

#### QUESTIONS

At the Municipal School Board Election on February 5, 1957, one member should have been elected for six years and one member for two years. Two candidates were on the ballot. The instructions directed the voter to "vote for one for six year term". What is the result thereof and the steps, if any, to be taken by way of correction?

#### CONCLUSION

There was an election insofar as the six year term of office is concerned; otherwise, there was no election. The member of the Board, who was originally appointed to the position left vacant by Mr. Tafoya, will serve until the next election in 1959.

There is no basis for a special election.

### **OPINION**

#### ANALYSIS

Under the facts, as we understand them, two appointees were serving on the Magdalena School Board. One appointee was serving out a term to expire in 1957. The other appointee was serving out a term to expire in 1959.

This office has previously ruled in Opinion of the Attorney General No. 57-4, dated January 14, 1957, that the term of office of members of the municipal school board shall be six years, except those elected to fill vacancies, which could be for the unexpired portion of the term. This is the only logical interpretation of §§ 73-10-1 and 73-10-4, and preserves the announced policy therein stated of staggered terms. Accordingly, the election in Magdalena, on February 5, 1957, should have been for two members of the school Board; one to be elected for a term of two years to fill out the unexpired portion of the term of Mr. Melcor Tafoya; the other should have been for six years.

The question then becomes what was the effect of the instructions on the ballot to vote for one candidate for six years when there were but two candidates, Mr. Justiniano Armijo and Mr. J. R. Clark.

Elections should only be invalidated with great reluctance, and then only to the extent that the will of the voters cannot be ascertained. The notice and instructions were deficient in that provision should have been made for voting on a candidate for two years, i.e., the unexpired portion of the term of Mr. Tafoya. However, failure to give notice of a school board election does not invalidate the election. Opinion of the Attorney General No. 3703, dated January 31, 1941. Hence, an incomplete notice should not invalidate the election for six years of Mr. Armijo. As to the latter candidate, and his intended term of office, the will of the voters is clear. We hold that Mr. Armijo was validly elected for a six year term.

There remains the more complicated problem of the unexpired portion of the term of Mr. Tafoya. The appointee who was originally appointed to fill Mr. Tafoya's position, Mr. Tafoya having moved to Arizona, should only have held office by virtue of that appointment ". . . until the next succeeding election for members of such board." § 73-10-2, N.M.S.A., 1953 Compilation; Opinion of the Attorney General No. 57-4, supra. In other words, the term of this appointee should have expired, and did, in 1957.

The question then becomes one of deciding whether a vacancy resulted. Section 73-10-2, supra, authorizes municipal boards of education to fill vacancies in their membership by majority vote. But was there a "vacancy" according to the meaning of that term as used in New Mexico jurisprudence?

Article XX, Section 2, New Mexico Constitution, provides as follows:

"Every officer, unless removed, shall hold his office until his successor has duly qualified."

In previous opinions of this office, the term "officer" has included both state and local officers. We hold that a member of a municipal board of education is an "officer" within the meaning of the above quota provision.

Turning to the effect of this section upon expiration of an officer's term, with no qualification by a successor, we find the cases reviewed at length in Opinion of the Attorney General No. 57-30, dated February 15, 1957, a copy of which will be furnished upon your request. From this opinion, we find that death, resignation, permanent removal from the territorial limits of the office are vacancies, **but the expiration of a term is not.**

Accordingly, the member who was originally appointed to fill the position of Mr. Tafoya is in all respects a member at the present time, even though a holdover, and will hold office until the next succeeding election for school board members; hence, a special election is not justified.

We trust this fully answers your inquiries.