

## **Opinion No. 58-97**

May 16, 1958

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Howard M. Rosenthal,  
Assistant Attorney General

**TO:** Mr. James C. Compton, District Attorney, Ninth Judicial District, Portales, New  
Mexico

### **QUESTION**

#### QUESTION

May an individual engaged in employment variously denoted and denied as "rural school supervisor" run for public office? (The facts are so at variance a reading of the body of the opinion is necessary for proper understanding thereof).

#### CONCLUSION

If the individual is, in fact, a "rural school supervisor", he is barred from seeking public office during his period of employment.

### **OPINION**

#### ANALYSIS

Such inextricable confusion exists on the precise status of the individual involved that a recital of the discrepancies is here warranted to indicate the inability of this office to arrive at any factual determination.

A chronological description on information sources discloses the following:

A letter of inquiry, dated April 11, 1958, states:

". . . the minutes in the office of the County School Superintendent reflect that Mr. Stout was nominated and appointed as the Roosevelt County School Supervisor in the minutes of January 7, 1957. The only other information which the records reflect . . . Joel Price advised me that Mr. Stout was now working as an Assistant County Superintendent and that such had been approved by a Mr. Heathman, the State School Budget Auditor. . . ."

This office thereupon called Mr. Heathman, who states that it is not the function of his office to categorize the employment of any individual -- that its sole function was auditing.

On a date unknown to this office, a New Mexico Teacher's Contract, dated July 1, 1957, and duly signed on behalf of the Roosevelt County Board, was presented to this office in which a Victor Stout is employed as an Administrative Assistant for a term commencing July 1, 1957 and ending June 30, 1958.

Coincident with the receipt of this contract, a certified copy of the minutes of the meeting of the State Board of Education held August 15, 1957 indicates that an application for a Victor Stout was submitted to the State Board to fill the position of County Supervisor for Roosevelt County. This application was denied, among other reasons, because such employment as supervisor was not justified -- also that Mr. Stout was not qualified for employment as County School Supervisor.

At this point, this office believed that a description of the duties of Mr. Stout might disclose whether he was, in fact, a Supervisor or an Administrative Assistant, and pursuant to this a list of the duties of Mr. Stout, certified to by the Roosevelt County Board by its President and by the County School Superintendent, was secured.

A request was made from the office of the State Superintendent to clarify Mr. Stout in accordance with his duties. These duties, by enclosure dated May 7, 1958, were variously characterized as "administrative", and "supervisor and administrative" and "supervisory", and "teachers, principals, supervisors and superintendent are all involved."

This office referred "to the Handbook for Elementary Schools dated 1957" and to the "Handbook for Secondary Schools dated 1957" without being assisted in making the necessary factual determination.

In a letter dated May 8, 1958, the Department of Education takes the position that Mr. Stout was employed "in some capacity not reported to us in lieu of the position of Rural School Supervisor". The letter then goes on to refer this office back to the minutes of the Roosevelt County Board, which is where we started.

On the strength of the foregoing, this office finds it is unable to make such a factual determination of Mr. Stout's employment as would permit us to assert that he does or does not come within the provisions of § 73-9-7, N.M.S.A., 1953.

This section, among other things, states:

". . . Such supervisors . . . nor engage in any political activity and shall not be candidates for any elective office during their term of office as such supervisors."

A legal memorandum submitted this office by the legal counsel of an interested party suggests that the case of *Gibbany v. Ford*, 29 N.M. 621, is authority for the proposition that the Legislature is without power to prescribe qualifications for holding public office other than those set forth in the Constitution. While this would appear to be correct, this office doubts that the prohibition contained in § 73-9-7, as above delineated, constitutes

such a disqualification as comes within the terms of our constitutional injunction. The Supreme Court in *Gibbany v. Ford*, in declaring unconstitutional a residential requirement on a municipal office, held that such requirement operated as an additional qualification to those set out in the Constitution. This office does not think that the prohibition contained in § 73-9-7 is such a disqualification as was in issue in the *Gibbany v. Ford* case.

Hence, this office is driven to the conclusion that if Mr. Stout was employed as and is, indeed, a Rural School Supervisor, he must relinquish such employment before engaging in political activities or running for a public office. If his employment status is other than that of Rural School Supervisor, he is not so barred.

Your inquiry raised several questions other than the one herein discussed, but we are of the opinion that this response will clarify the situation in toto. If we are in error in this assumption, please advise us accordingly.