

Opinion No. 59-115

August 20, 1959

BY: HILTON A. DICKSON, JR., Attorney General

TO: Mr. Victor C. Breen District Attorney Tenth Judicial District Tatum, New Mexico

{*179} This is in response to your recent request for an opinion on the following question:

Can the county school superintendent of Quay County who is in his second consecutive term and who, prior to the expiration of this term, will have no schools under his jurisdiction, seek another county office in the coming election?

The answer to your above question is no.

Article X, Section 2 of the Constitution of New Mexico, prohibits a person from serving three consecutive terms as a county officer in any capacity. There must be an interim period of two years before any person, who, having served two terms consecutively, is eligible for another county office. This section reads as follows:

"All county officers shall be elected for a term of two years and after having served two consecutive terms, shall be ineligible to hold any county office for two years thereafter."

We interpret this constitutional prohibition to mean that a person elected for two consecutive two-year terms to a county office is ineligible to seek a third consecutive county elective position. It has been suggested that an incumbent might resign before the end of his second consecutive term and thus contend he has not served the full two terms. It is our opinion that irrespective of whether or not he resigns prior to the completion of his second term, he is nevertheless ineligible to seek election for a third consecutive time. To apply any other meaning to this section would make a mockery of the intent of those who framed this section. We have held in Attorney General's Opinion No. 5995 that constitutional prohibitions against the increase in salary of an officer during his elective term cannot be side-stepped by the resignation of that officer and reappointment to fulfill his own unexpired term. We said in that opinion that subterfuge will not be permitted to avoid the clear meaning and intent of a constitutional prohibition.

If an elective county official was permitted to resign during any portion of his term, it is manifest that such official could resign on the last day of his second term and claim that he has not served two consecutive terms and thus is eligible to seek re-election.

The fact that the county school system is being consolidated with other systems does not dispose of the elective office of the county school superintendent. Section 73-5-1, N.M.S.A., 1953 Comp., (P.S.), provides that a county school superintendent **shall** be elected for each county at each general election. This section provides for the term of

office which is consistent with the constitutional provision quoted above, and for the salaries {**180*} of the superintendent in relation to a number of factors. This section then continues under subsection (d) in part as follows:

". . . And Provided further, that in counties where there are no rural school rooms under the jurisdiction of the county school superintendent that the salary of the county school superintendent shall be one dollar (\$ 1.00) per year shall be paid to any such county school superintendent . . ."

The present county school superintendent is entitled to complete his term of office for which he was elected even though during a portion of this term he may have no rural schools to administer. He is not eligible to seek election to another county office in the forthcoming election but must wait the prescribed two-year period.

B. J. Baggett

Assistant Attorney General