

## Opinion No. 60-23

February 10, 1960

**BY:** OPINION of HILTON A. DICKSON, JR., Attorney General

**TO:** Mr. Ray A. Kersting Administrative Assistant Local Government Division  
Department of Finance & Administration P. O. Box 1359 Santa Fe, New Mexico

### QUESTION

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1. Must Mr. Paul Martinez, member of the Board of Trustees of the Town of Pecos, New Mexico and presently Acting Mayor, resign from the board in order to run for Mayor in the next town election?
2. If Mr. Martinez is elected Mayor or resigns as a member of the Board of Trustees, may the board appoint another member to fill the vacancy?

#### CONCLUSIONS

1. No.
2. No, see Analysis.

### OPINION

#### {\*368} ANALYSIS

In regard to your first question we refer you to Opinion No. 59-210 dated December 30, 1959, copy of which is enclosed. In this opinion we stated that there was no constitutional or statutory prohibition against a school bus driver employed by the county from running for the office of County Commissioner. We feel that the reasoning applicable in that opinion is equally applicable here.

If, after a citation of the authorities cited in our previous opinion, any question remains as to Mr. Martinez' qualifications to run for the office of Mayor, obviously a public office, we refer you to Section 14-16-3, N.M.S.A., 1953 Compilation which states that the corporate authority of any town organized or incorporated under general sets of incorporation shall be vested in a board consisting of one Mayor, four other trustees and one recorder, who shall be **qualified electors residing within the limits of the corporation organized**. Thus, if Mr. Martinez resides within the limits of the town of Pecos, which we assume he does, there can be no question but that he may run for the position of Mayor and need not resign from the board of trustees in order to do so.

We turn now to your second question. This question is answered by a reference to Section 14-17-5 which states as follows:

"All vacancies occurring by death, disability or resignation of any city council or board of aldermen, or board of trustees of any incorporated city, town, or village, shall be filled by appointment by the mayor of such city, town or village, by and with the advice and consent of the city council or board of aldermen or board of trustees, as the case may be, the person so appointed to hold his office until the election and qualification of his successor at the next succeeding municipal election.

Therefore, if Mr. Martinez, is elected Mayor or resigns from his membership on the board, the appointment of his successor must be made by him, if he is Mayor, or the elected Mayor with the advice and consent of the board of trustees.

We trust that your question has been fully answered.

By: Philip R. Ashby

Assistant Attorney General