

Opinion No. 64-71

May 28, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

TO: Mr. Sam R. Grijalva, Secretary, Cobre Board of Education, P. O. Box 675, Bayard, New Mexico

QUESTION

QUESTIONS

1. Can a person whose spouse teaches in the public school system be a member of the school board for that system?
2. Is a three-year oral contract for a superintendent in the public school system executed in February, 1963, valid?

CONCLUSION

1. Yes.
2. No.

OPINION

ANALYSIS

Section 5-1-10, N.M.S.A., 1953 Compilation, an act relating to nepotism, specifically exempts persons employed as teachers in the public schools from its provisions. Thus there is no prohibition against the spouse of a school teacher being a member of the school board. However, in order to prevent any possible conflict of interest, such school board member should not vote on any issue which affects his or her spouse individually. Such refusal is not necessary if the issue affects all the teachers in the system as a group.

In your second question you ask whether a three-year contract approved by the local board of education in February, 1963, and which was not written, is valid. A portion of Section 73-12-13, N.M.S.A., 1953 Compilation, read as follows prior to its amendment in 1963:

"Written contracts on forms approved by the state board shall be executed by governing boards and teachers not later than ten days before the opening of the next school term."

In the case of **Vigil v. Barela**, 71 N.M. 213, 377 P.2d 515, decided March 20, 1962, rehearing denied January 25, 1963, it was held that Section 73-12-13, supra, also applies to superintendents. Largely because of this decision, Section 73-12-13, supra, was amended in 1963 (effective date of the amendment being March 20, 1963) to exempt from its provisions "Certified personnel required to hold administrative certificates who spend more than one-half of their time in administrative duties." Thus, in February, 1963, the time the board of education approved the three-year contract in question, there was a requirement that superintendents' contracts be in writing.

But there is a further and more important facet of this entire question that must be discussed. In February, 1963 the board of education voted to give the superintendents a three-year contract. However, prior to that time the Supreme Court had ruled in **Vigil v. Barela**, supra, that the one-year limitation on "teacher" contracts contained in Section 73-12-13, supra, also applies to superintendents. Thus the Board of Education did not have the authority to grant such a three-year contract, whether in writing or not.

In March, 1963, the legislature also amended Section 73-12-14, N.M.S.A., 1953 Compilation, the provision governing public school personnel contracts to provide that "public school personnel who are required to have administrative certificates and who engage in administrative work more than half-time may be issued contracts for terms of service **not to exceed two years.**" (Emphasis added).

Our conclusion must be that the contract approved by the local board of education in February, 1963, was not valid. As the court said in **Vigil v. Barela**, supra, which case also involved the validity of a superintendent's contract which was for a period in excess of one year:

"We hold that appellee could not be employed under the Teacher's Tenure Act for a period longer than one (1) year, and that the contract entered into . . . violated Section 73-12-13."