

Opinion No. 65-109

June 23, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Felipe N. Trujillo, Superintendent, Taos County Board of Education, Taos, New Mexico

QUESTION

FACTS

The term of office of an elected county school superintendent does not expire until December 31, 1966. However, the county school system is to be dissolved in July, 1965 in favor of a consolidated school system.

QUESTIONS

1. Does the incumbent county school superintendent continue to draw his salary for the remainder of his present term of office?
2. Can he do so and also accept employment in another state?
3. Can he do so and be employed at the same time as a teacher in the county and draw a salary therefor?
4. Can he do so and be employed at the same time in employment not related to school administration or teaching?
5. Who is the paying agent?

CONCLUSIONS

1. Yes.
2. No, the office would become vacant.
3. Yes, so long as he performs the duties of the office.
4. Yes, so long as he performs forms the duties of the office.
5. The county disbursing officer (county treasurer).

OPINION

{*187} ANALYSIS

As we noted in Opinion No. 59-115, "The fact that the school system is being consolidated with other systems does not dispose of the elective office of county school superintendent." In fact, Section 73-5-1, N.M.S.A., 1953 Compilation expressly recognizes that the office continues to exist even though the county school superintendent has no rural school rooms to administer. This section provides that when this is the case the county school superintendent is to draw a salary of one dollar a year.

The Supreme Court has upheld the right of the legislature to provide that the salary of county school superintendents be one dollar per year in counties where there are no longer any rural school rooms to administer notwithstanding that such officials do continue to have a few miscellaneous duties. **Thomson v. Board of County Commissioners**, 66 N.M. 159, 344 P.2d 171.

In the Thomson case the salary was one dollar per year in the particular county prior to the time the county school superintendent took office. Thus the Court did not have to concern itself with Article IV, Section 27 of the Constitution which provides in pertinent part as follows:

". . . nor shall the compensation of any officer, be increased or decreased during his term of office, except as otherwise provided in this Constitution."

Article X, Section 2 of the Constitution provides that "All county officers shall be elected for a term of two years." And, of course, the county school superintendent is a county officer. There is no other provision in the Constitution providing for an increase or decrease in the salaries of county officials during their term of office. Since the term of the county school superintendent in the county wherein the school system is to be consolidated does not expire until December 31, 1966, the salary of the incumbent cannot be reduced to one dollar per year until that time without violating Article IV, Section 27.

Your second question asks whether this county school superintendent may continue to draw his salary in that capacity while at the same time being employed at the same time in another state. The answer is no.

Section 5-3-1, N.M.S.A., 1953 Compilation provides that any elected county official vacates his office when (a) he removes from the county in which he is elected or (b) by being absent from the county for six consecutive months. In addition, Section 73-5-2, N.M.S.A., 1953 Compilation requires that the county school superintendent "maintain his official office at the county seat." Thus the office becomes vacant upon his removal from the county.

In your third and fourth questions, which we will answer together, you ask whether the superintendent can accept employment in the county as a teacher and also whether he

can accept employment in the county which is not related to schools and draw, in addition to his salary as superintendent, the salary for the other position or job.

Initially we point out that the office of county school superintendent in a county which has no rural school rooms is legally compatible with a position of teacher in the consolidated school system. See Opinion No. 60-154.

The real problem is Section {~~188~~} 73-5-2, N.M.S.A., 1953 Compilation which provides that "The employed and elected county school superintendents shall devote all of their time to the performance of their official duties."

On extremely infrequent occasions some courts have held that an absolutely obsolete statute is repealed by implication. But the above provision is in no sense obsolete since it applies to all county school superintendents, some of whom still have full time duties. And actually it is not even obsolete in the case of county school superintendents in counties where there are no rural schools to administer since the superintendents therein still have a few duties to perform -- such as promotion of Arbor Day. Section 56-1-1, N.M.S.A., 1953 Compilation. However, the duties remaining for superintendents in such counties do not by any stretch of the imagination require their full time. And since the law does not require a useless act and is not to be interpreted so as to reach an absurd result, the county school superintendents with no rural schools to administer may accept other employment in the county and be paid therefor in addition to the superintendent's salary. Of course, in order to do the county school superintendent must continue to faithfully perform the few duties imposed upon him.

The paying agent for the superintendent's salary is the county disbursing officer, i.e., the county treasurer.