

## Opinion No. 12-944

September 9, 1912

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. A. T. Hammett, Gallup, New Mexico.

### **COUNTY SCHOOL SUPERINTENDENTS.**

Vacancy in office of county school superintendent is filled by County Commissioners. At an election a candidate's name cannot be placed upon more than one ticket.

### **OPINION**

{\*101} Your letter of the 6th inst. was received on Saturday but I have had no earlier opportunity to answer.

The question which you submit as to the power to appoint to fill a vacancy in the office of County School Superintendent, is readily answered, but the other question as to the duration of the term of office of the person appointed is not so clear.

The statute of 1901 which is printed as Chapter 2 of the Laws of that year, make it the duty of the Governor to fill such vacancies, but this act was repealed by Chapter 6 of the Laws of 1907 and the power to fill such vacancies was restored to the Board of County Commissioners, and that act says that the "appointee shall be entitled to hold said office until his successor shall be duly elected and qualified according to law." At that time the county officers were elected for a term of two years and there was no provision of law for any special election to fill vacancies to county offices. It would follow that the appointee would necessarily hold office during the remainder of the term for which the officer who had vacated the office, was elected.

At the present time, however, conditions have been changed by the constitution, so that county officers are elected for a term of four years, and as within the four years there would be an election throughout the state for the election of a member of Congress, at first glance, it might appear that at that election some one should be elected for the remainder of the term of the office which had been vacated. It is axiomatic, however, that no election can be legally held except as it may be provided for by statute, and I can discover no authority, either in the constitution or in the statutes, for any election to fill vacancies in county offices or for officers to fill out unexpired terms. The only reference in the constitution to any vacancy in a county office is to be found in Section 4 of Article XX, and the only county officer there mentioned is a county commissioner. This emphasizes the correctness of the view that vacancies in other county offices are to be filled by the County Board, as in this section of the constitution it is provided that the Governor shall by appointment fill any vacancy in the office of county commissioner. It further provides that such appointee shall hold his office until the next general

election, when his successor shall be chosen and hold his office until the expiration of the original term. It is quite clear that if your present case were one of a county commissioner, then at the approaching election a successor should be chosen to serve until the end of the year 1916. As to {\*102} other county officers, however, no similar provision can be anywhere found. There being no specific authority to elect a county school superintendent to hold office until the expiration of the original term when the superintendent has resigned, I am forced to the conclusion that the appointment made by the County Commissioners must hold until the expiration of the original term, because no successor can be sooner elected and qualified, as there is no authority of law for an earlier election.

The authority for electing presidential electors in November next, is to be found in Section 8 of Article XX of the Constitution, and for the election of a representative in Congress in Section 25 of the Revised Statutes of the United States.

You also refer to the question of whether a candidate's name can be placed upon more than one ticket. The statute on this subject is to be found in Chapter 127 of the Laws of 1905, which I believe is unchanged by the later election law of 1909, which repeals Section 3 of the Act of 1905. You will see that it prohibits, after the candidate has been nominated and a certificate of that fact filed with the probate clerk, the printing or circulation of any ticket or ballot having therein the name of any such candidate to nominated.