

## Opinion No. 13-1044

May 15, 1913

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

**TO:** Honorable Filadelfo Baca, Assistant Superintendent of Public Instruction, Santa Fe, New Mexico.

### **SCHOOLS.**

Member of State Board of Education must not be interested in any contract as to a text book.

### **OPINION**

{\*210} I have today received your letter of yesterday in response to mine of May 10th, which you say is with reference to the effect of Section 7 of Chapter 119 of the Laws of 1903 upon the contract between the State Board of Education and Dr. Roberts for the preparation of a civics and history of New Mexico. My letter was with reference to that section as it appears in its amended form in Chapter 70 of the Laws of 1913, that portion thereof which was considered having been changed so as to make it a little stronger and more definite.

In writing my letter, I had in mind only the status of Dr. Roberts as President of the Normal University and entirely overlooked the fact to which you now call attention, that he is also a member of the {\*211} State Board of Education. This presents a new matter for consideration.

The statutory prohibition is directed to "all persons identified in an official capacity with the public schools or with the higher educational institutions." As to the second clause, the conclusion reached in my former letter is still satisfactory to my mind, as I was then considering only whether Dr. Roberts was identified in an official capacity with the higher educational institutions. The answer to your letter is to be found in deciding whether Dr. Roberts, by virtue of his membership in the State Board of Education, is "identified in an official capacity with the public schools."

The State Board of Education is the successor to the territorial board which was created by Chapter 97 of the Laws of 1907, which act was amended in a number of particulars by Chapter 121 of the Laws of 1909. An examination of those statutes will show that the duties of the State Board relate entirely, I believe, to the public schools and I see no escape from the conclusion that the members of the board are "identified in an official capacity with the public schools." I have no doubt that members of such boards are officers in the proper sense of the term and, as such members, act in an official capacity.

I regret being compelled to say, upon this re-consideration, that the making of any, contract as to the adoption and distribution of a text book for use in the public schools, in which any member of the State Board of Education would be in any way interested, falls within the prohibition of the statute referred to.