

Opinion No. 13-1120

October 11, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Mrs. S. C. Nutter, Clovis, New Mexico.

CLERK OF CITY BOARD OF EDUCATION.

Clerk of city board may be member of such board and be compensated for services as clerk.

OPINION

{*297} Referring to the question which you recently asked me, as to whether a member of a city board of education should be elected as clerk of such board and receive compensation for his services as clerk, I have made a careful examination of the statutes and I am satisfied that such a proceeding would not be improper.

{*298} The doubt which had arisen in your mind must have been based upon Section 1572 of the Compiled Laws of 1897, which provides that, "No member of the Board of Education shall receive any pay or emolument for his services." This section has been considered by the Supreme Court of New Mexico in the case of Snyder vs. Albuquerque, in Vol. 10 of the New Mexico Reports, beginning at page 446. In that case the plaintiff had sued the board of education to recover compensation for his services as a lawyer, he being, at the time, a member of the board. The court decided against the validity of his claim, under the circumstances disclosed by the pleadings in the case, but clearly recognized the possibility of a member of such a board, by employment or contract with the board, to receive compensation for services not as a member, but in other capacities.

The services to be rendered by the clerk of such a board are entirely different from those required from a member and no member as such would be expected or required to perform the duties of a clerk. The prohibition in Section 1572 is as to pay for the services of a member -- that is to say, for services as such member.

Section 1570 of the Compiled Laws, directs the board to elect a clerk, who shall receive such compensation for his services -- that is his services as clerk -- as the board may allow. I can find nothing in the statutes which disqualifies members of such boards from serving as clerk and, for his services as clerk, there is no reason why he should not receive compensation.