

Opinion No. 15-1459

March 5, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Hon. J. D. Mell, Roswell, N. M.

As to vacancies in boards of education.

OPINION

{*46} I have received your letter of the 3rd inst. asking for my opinion in regard to vacancies. You say that Mr. J. J. Jaffa was elected in 1913 to a four-year term on the Board of Education for school district No. 1, which includes the City of Roswell; that shortly after his election he resigned and the Board appointed Mr. Nicholas to fill the vacancy, and the question now is whether you shall elect someone to fill out the two years that Mr. Jaffa would have been entitled to serve, or does Mr. Nicholas hold over until Mr. Jaffa's term would have expired.

I must assume that Mr. Jaffa was elected in 1913 in accordance with the requirement of Section 2 of Chapter 43 of the Laws of 1912. That section provides for the election of five members of the Board of Education in a city, two for two years and three for four years, and that thereafter a regular election of members succeeding those whose terms expire shall be held on the first Tuesday of April of each odd numbered year. It is to be noted that at the later elections, this statute does not specify for what term the new members shall be elected as successors of those whose terms expire. It is probable that the intention was that at no election after the first one, should the whole five be elected, and to accomplish that purpose it would be necessary to elect at each election after the first one, two or three members for terms of four years. That, however, is aside from the question which you ask.

I believe that the answer to your question is to be found in a consideration of Section 1568 of the Compiled Laws of 1897. That section is the one which gives the Board of Education power to fill any vacancy and has a proviso to the effect that any vacancy occurring more than ten days previous to the annual election, and having an unexpired term of one year, shall be filled at the first annual election thereafter and the ballots should read: "To fill unexpired term," after the name of the person for whom the vote is given. This section has never been repealed or amended except so far as it is modified as to there being an annual election. Taking it in connection with all of the latter legislation, it seems proper to hold that the annual election spoken of in Section 1568, must mean the next regular election at which members could be elected.

My conclusion is that at the approaching election this Spring, you should elect not only successors to the two members who were elected in 1913 for two years, but also a member to fill the unexpired term of Mr. Jaffa.