

Opinion No. 17-2051

September 11, 1917

BY: C. A. HATCH, Assistant Attorney General

TO: Mr. L. L. Cahill, Springer, New Mexico.

Statute Requiring Members of Boards of Education to Reside at Least Two Years in the District Is Violative of Section 2, Article 7, of the Constitution, and Is Therefore Void.

OPINION

We have your letter of the 3rd, and note your request for advice as to the construction of Section 73, of the School Laws, the same being Section 4879, the 1915 Codification. In reply thereto, we advise as follows:

Section 4879 among other things provides:

"Each member of the Board of Education shall be a qualified elector of the State of New Mexico, and shall have resided in the district at least 2 years next preceding the election, and shall be a tax payer."

Section 2, Art. 7, of the Constitution, contains this language:

"Every male citizen of the United States, who is a legal resident of the State, and is a qualified elector therein, shall be qualified to hold any public office in the state, except as otherwise provided in this Constitution."

If a member of the Board of Education is a public officer within the purview of this constitutional provision, then Section 4879 of the Statutes, is in direct conflict therewith, and, necessarily, the statutory provision so far as conflicting with the Constitution, is void.

That the framers of the Constitution contemplated and had in mind members of Boards of Education when framing this identical Section of the Constitution, is evidenced by the succeeding part of Art. 2, Section 7, which is "That women possessing the qualifications of men electors, prescribed in Paragraph 1 of this Article, shall be qualified to hold the office of County Superintendent, and shall also be eligible for election to the office of School Director or members of the Board of Education." This farther provision giving to women the right to hold the office of a member of the Board of Education, providing only, that they have the qualifications of male electors, without requirement as to tax paying etc., discloses the makers of the Constitution had this particular office in mind and intended its provisions to govern as to the qualifications therefor. To hold otherwise, and that Section 4879 applies to the male members of such board and not to women

holding such office, would require different qualifications for the same office, depending on the sex of the member.

We do not think such was the intention of the makers of the Constitution, nor of the people in adopting it. We therefore conclude the Section of the Statutes requiring different qualifications for members of the Board of Education, than are prescribed by Section 2, Article 7, of the Constitution, is in conflict with said Section of the Constitution, and is to that extent void.

In view of this conclusion, we deem it unnecessary to answer that portion of your letter asking our definition of the term "tax payer," as used in Section 73, of the School Laws. We are therefore not defining this term.