

**Opinion No. 18-2145**

November 21, 1918

**BY:** C. A. HATCH, Assistant Attorney General

**TO:** Mr. Filemon Sanchez, Taos, New Mexico.

Death of Elected Candidate Before Term of Office Commences Does Not Seat Minority Candidate.

**OPINION**

I have your favor of the 16th instant wherein you state that you were a candidate for County School Superintendent of Taos County on the Democratic ticket on November 5th last, and you were defeated. You state that your opponent, Mr. Quintana, died two days after the election, and you ask what effect his not qualifying on account of death has.

The question you ask is rather a peculiar one, and one to which the ordinary rules do not apply. However, there is a principle of law that has been announced by the courts of several states, to the effect that where the successful candidate is held not entitled to the office for any reason, the office simply becomes vacant, to be filled as in the case of vacancy caused by any other reason. The theory advanced by the courts is that it is contrary to the theories of our government to declare one elected to an office who has received a minority of the votes cast. The courts go ahead and point out that in some instances the next highest man might have received a very few or negligible number of votes, and that it would not be right to give the office to one who does not receive a majority or plurality of the votes cast. Opposed to this doctrine is another line of decisions holding to the contrary, but we believe the great weight of authority sustains the proposition that the person receiving the majority of the votes cast is not entitled to the office.