

Opinion No. 20-2761

December 22, 1920

BY: HARRY S. BOWMAN, Assistant Attorney General

TO: Mr. E. M. Brickley, Carrizozo, New Mexico.

State Senator Cannot Hold Office on County Board of Education.

OPINION

In reply to your letter of the 17th inst., asking if it will be necessary for you to resign your position as a member of the county Board of Education before you can qualify as a State Senator, we wish to advise you as follows:

Section 28, Article IV of the Constitution of the State of New Mexico provides that:

"No member of the legislature shall, during the term for which he was elected, be appointed to any civil office in the State, nor shall he within one year thereafter be appointed to any civil office created, the emoluments of which were increased during such term; nor shall any member of the legislature, during the term for which he was elected, nor within one year thereafter, be interested, directly or indirectly, in any contract with the State or any municipality thereof, which was authorized by any law passed during such term."

The last clause of Section 3 of Article IV of the Constitution reads as follows:

"No person shall be eligible to the legislature who, at the time of qualifying, holds any office of trust or profit under the state, county or national government, except notaries public and officers of the militia who receive no salary."

The solution of the question which you submit lies in the interpretation of these two sections of our Constitution.

Since you are now holding the office of a member of the county Board of Education, if there is any prohibition against your serving in any capacity it is contained in the last quotation above. A member of a county Board of Education is an officer within the contemplation of this section and the only question arises as to whether it is an "office of trust or profit under the state, county or national government." We believe it would require no argument or authority to sustain the proposition that a member of a county Board of Education is an officer of trust as the handling of property and funds of the school district is entirely within the discretion of such a board.

It is therefore our opinion that you would not be qualified to serve as a State Senator while holding the position of a member of the County Board of Education of your county.

I might suggest that a similar holding was made by former Attorney General Frank W. Clancy, in an opinion rendered by him to Honorable T. J. Mabry of Clovis, New Mexico, under date of December 20th, 1913, the only difference in the two cases being that the inquiry made by Mr. Mabry was in connection with the holding of the office of a member of the legislature and that of a member of the Board of Education of a City.

We believe the same rule applies in both cases.