

Opinion No. 21-2955

May 9, 1921

BY: A. M. EDWARDS, Assistant Attorney General

TO: Mr. Saturnino Baca, Post Office Box 281, Belen, New Mexico.

Election of School Directors. Employment Sons of Directors as Teachers.

OPINION

{*53} Your letter of May 5th received.

Your first question is whether an election for school directors is legal when held by one director. The law requires that the directors shall call the election and canvass the returns, and it is the custom for directors to act as judges of election. If all the other steps taken at the election were legal, the fact that the same was held by only one director would not invalidate it, and the directors elected at such election would legally hold the office.

Your second question is whether, in case an election is not held, will the old directors hold over, or will the vacancy have to be filled by the County Superintendent? If the directors have failed to call a school election, it is provided in Section 4852 of the 1915 Compilation that the County School Superintendent shall make affidavit of such fact to the District Judge or before a Justice of the Peace, and the Superintendent shall act as prosecuting witness against said director. The same section provides a penalty to be imposed upon the school director who so failed to call such election. It is, therefore, your duty to take this matter up and prosecute the directors who were thus negligent in their duty.

There seems to be no provision in our law by which directors may be appointed by the County School Superintendent. The present incumbents of the office will probably hold until their successors are qualified.

There seems to be no provision in our statute for the calling of a special election in the case of a failure to hold the regular election, but, in our opinion, it would nevertheless be proper for the school directors to call a special election to elect directors.

Your third question is if school directors, in selecting teachers, have the right to employ their own sons and daughters. Section 6 of Chapter 105 of the Laws of 1917 requires that teachers shall be employed by the Board of School Directors with the approval of the County Board of Education. There is nothing in the law to prevent the employment of children of school directors if such employment is approved by the County Board of Education.