

Opinion No. 22-3381

April 17, 1922

BY: HARRY S. BOWMAN, Attorney General

TO: Mr. F. C. H. Livingston, City Attorney, Belen, New Mexico.

Same Person May Hold Office of Member Board of Education and of Board of Trustees of Village.

OPINION

{*143} Complying with your oral request for an opinion regarding the holding of the office of a member of the Board of Education of a municipal school district and the office of a member of the Board of Trustees of an incorporated village by the same person, I wish to advise.

Section 4879, Code 1915, provides that "no member of the board of education shall be a member of the council or town trustees, nor shall any member of the council or town trustees be a member of the board of education."

You will note that there is no prohibition against a member of a board of education being a member of the village trustees nor is there any prohibition against a member of the village trustees being a member of the board of education.

{*144} The question arises whether impliedly the prohibition exists because of the fact that the words "town trustees" are used in the section quoted.

The section quoted is a part of Section 12, Chapter 77, Laws 1891, as amended by Section 1, Chapter 39, Laws 1893. It is to be kept in mind that said Chapter 77 made provision only for boards of education in cities and towns, the omission of any provisions for the government of boards of education for villages being significant.

At the same session of the legislature which enacted Chapter 77, Laws 1891, a law was enacted providing for the incorporation of towns and villages, being Chapter 32, Laws 1891.

No provision was contained in said Act nor in Chapter 77 prohibiting the members of the boards of trustees of such village from serving as members of the board of education of the village. It would appear, therefore, as if it had not been the intent of the legislature to impose the same restrictions upon members of boards of trustees of villages as was imposed upon members of boards of trustees of towns and of city councils of cities insofar as serving upon boards of education is concerned, nor has there been any subsequent legislation imposing like restrictions in cases of members of the board of village trustees.

Ordinarily the words "town trustees" would include trustees of villages, but in view of the condition of the legislation upon this subject it appears to me that it was the intent of the legislature to exclude members of boards of trustees of villages from the restrictions imposed upon members of boards of trustees of towns and members of city councils of cities as to service upon boards of education and I am, therefore, of the opinion that there is no statutory objection to the holding of the said two offices by the same person in the village of Belen.