

Opinion No. [30-100]

September 17, 1930

BY: J. A. MILLER, Assistant Attorney General

TO: Mr. Orval Ricketts, Farmington, New Mexico.

SCHOOLS -- Offices of member of school board and member of legislature not incompatible. § 120-903, Code 1929.

OPINION

Before me is yours of the 12th inst. asking for an interpretation of section 903, Chapter IX of the New Mexico School Code, that is, you ask whether a member of the Municipal School Board if elected a member of the State Legislature would find it necessary to resign as a member of the school board.

The section to which you refer is also codified as section 120-903, Codification of 1929, and provides that "no person who is a state, county, or municipal officer . . . shall be a member of said board."

There can be no question as to the member of the legislature being a county or municipal officer. The question then is limited as to whether or not a member of the legislature is a state officer as that term is used in the statute. Our Supreme Court in the case, *State ex rel Ulrick vs. Sanchez*, 255 Pacific, 1077, in considering who are "state officers" quoted from IV Words and Phrases, Second Series, Page 675, as follows:

"The term 'state officers' is sometimes construed as only the heads of the executive department of the state elected by the people at large, such as Governor, Lieutenant Governor, State Treasurer, Attorney General, and the like, and it should be so construed when used without circumstances indicating any other intent. In its more comprehensive sense it includes every person whose duty appertains to the state at large. The exact sense in which the term is used in any particular law must often be determined by ordinary rules for judicial construction."

In the quotation above note particularly that the term "state officers" is sometimes construed as only the heads of the executive departments of the State elected by the people at large . . . **and should be so construed when used without circumstances indicating any other intent.** Section 120-903 relating to members of boards does not suggest any circumstances from which we may obtain aid in determining who are state officers within its meaning. Members of the legislature are not elected by the people at large but their election is confined to the voters in a given district.

Another section which might be considered in connection with your question is section 96-107, which provides that any office (belonging to a class mentioned) becomes vacant by an officer accepting and undertaking to discharge the duties of another incompatible office. In the case, *Haymaker vs. State*, 22 N.M. 400, the court defined incompatibility as follows:

"Incompatibility between offices is an inconsistency between the functions thereof, as where one is subordinate to the other, or where a contrariety and antagonism would result in the attempt by one person to faithfully and impartially discharge the duties of both. Held that office of member of city board of education and clerk thereof are incompatible."

In our opinion the office of the member of the legislature is not such a state office as required one elected thereto to resign as a member of a school board to which he may belong, under section 120-903, nor is there in our opinion any incompatibility between such offices which would make a vacancy in the school board by his accepting the office of member of the legislature.