

Opinion No. 37-1559

March 19, 1937

BY: FRANK H. PATTON, Attorney General

TO: Mr. H. R. Rodgers Superintendent of Public Instruction Santa Fe, New Mexico

{*61} We have your letter of March 15, inquiring whether the names of the two school directors of independent rural schools who are to run for reelection should be placed along with other nominees for the same offices in one list, and the two getting the highest vote should be declared the winners, or whether each of the opposing candidates should be required to declare which of the directors he is opposing, and whether the names should be arranged in the ballot accordingly.

The statute makes no provision in respect to that matter. It does say that the directors shall be elected as in other rural school districts. Section 1, Chapter 71, Laws of 1935. In the rural school districts, other than independent school districts, only one director is generally elected each year for a term of three years; but in cases of vacancy created by death or resignation more than one may run, and in such cases the terms for which they are elected is not the same. Consequently, candidates have to determine for which office they are running and against which of the candidates on the ticket. The same thing is true in independent rural school elections when there is a vacancy caused by death or resignation.

Further, Section 2 of Chapter 71, Laws of 1935, provides as to the members of independent rural school districts:

"Hereafter members of such board shall be elected **to succeed those whose terms expire.**"

In the case referred to by you, the directors who have been renominated are running to succeed themselves, and, in view of the language of the statute, every other candidate would have to determine which director he will succeed if elected.

The statutes require that officials who are elected shall hold office until their successors are elected and qualified. Assuming that the directors who are running for re-election are defeated, and that one of {*62} the two elected fails to qualify -- which of the two directors not reelected remains in place of the one not qualified? Unless there is an understanding as to which director each candidate should succeed if elected, that question could not be answered. This is an additional reason why it is my opinion that each candidate should determine which of the directors he is running to succeed.

You also inquired whether it is contrary to law for a member of the county board of education to serve as a member of the municipal board of education. This office has held (Opinion 940, dated March 14, 1935) that the office of member of the county

commissioners and the office of member of a rural independent school district are incompatible. By the same reasoning the office of a member of the county school board is incompatible with the office of a member of a municipal school board. The statute does not now prohibit other officials from being members of the municipal board, but if the office held is incompatible with that of the municipal school board the taking of the latter would vacate the former.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.