

Opinion No. 44-4629

December 27, 1944

BY: C. C. McCULLOH, Attorney General

TO: Mr. L. A. Thurston, Vice President

We are in receipt of your letter of December 22, 1944, in which you state that you are writing directly to this office in view of the fact that Mrs. Lusk is out of the state. In your letter you ask whether or not Chapter 123 of the Laws of 1943 covers members of the municipal boards of education. You also ask whether an appointment to fill a vacancy due to military service should be made only until the next school board election or until either the absent member returns or his term expires, in the event the law applies.

Chapter 123, being the act relating to temporary vacancies due to war service, provides in part by Section 1 as follows:

"Any incumbent of any public office or employment of the State of New Mexico, or of any of its departments, agencies, counties, municipalities or political subdivision whatsoever, who shall heretofore have entered or who hereafter shall enter * * * armed service of the United States of America, and who by reason of the duties imposed upon him in such service shall fail to devote his time to the performance in person of the duties * * * shall * * * be deemed to have * * * abandoned such office or employment until, but only until, he shall have been relieved from active duty in such service and shall have resumed the personal performance of the duties of such public office or employment."

In view of this section, since a municipal school district is a political subdivision of the State of New Mexico, it is my opinion that Chapter 123 covers members of the municipal boards of education.

In answer to your further inquiry, your attention is directed to Section 4 of this act which provides in part that:

"The * * * board * * * or political subdivision who is by law authorized to fill ordinary vacancies in the public office * * * is hereby authorized, empowered and directed to appoint to such public office or employment some qualified person who shall thereafter receive the salary and perform the duties thereof until the expiration of the term of the former incumbent or until his successor shall have been elected, appointed or otherwise chosen and qualified or until the former incumbent shall have been relieved from active duty in the armed services and shall have resumed the personal discharge of the duties of such public office or employment."

In view of this section, it is my opinion that the board should appoint someone to act for the absent member until either he returns from active service and is again able to take

up his duties, or until the expiration of the term of the former member and the election and qualification of his successor.

Trusting the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD,

Asst. Atty. General