

Opinion No. 49-5188

January 18, 1949

BY: JOE L. MARTINEZ, Attorney General

TO: Thomas P. Foy District Attorney Silver City, New Mexico

{*7} I have your letter of January 13, 1949, in which you request the opinion of this office upon three questions referred to you by the School Board of Santa Rita, New Mexico as follows:

1. Are the voters who live in Bayard, New Mexico and registered in Santa Rita, New Mexico eligible to vote in the school board election at Santa Rita, New Mexico?
2. Are the voters who live in Santa Rita, New Mexico and registered in Bayard, New Mexico eligible to vote in the school board election at Santa Rita, New Mexico?
3. Is an individual who resides in Vanadium, New Mexico, which is in a school district other than the Santa Rita District, eligible to be a member of the Santa Rita school board?

The State Department of Education has informed me that the Santa Rita School District is classified as an Independent Rural School District; therefore, its election procedure would be governed by Section 55-816 of the 1941 Compilation as amended in 1947, and which provides as follows:

"The procedure for the election of such members of the board shall be the same as that prescribed for the election of directors in municipal districts."

Section 55-905 of the 1941 Compilation as amended in 1947, regarding elections for municipal boards of education reads as follows:

"On the first Tuesday in February in each odd numbered year, **the qualified electors of the district and territories attached thereto for school purposes** shall elect at large one (1) or two (2) members of the said board as the case may be (except as provided in the section next preceding) to succeed those now holding office whose terms expire. Said election shall be called by the municipal board of education and shall be called, conducted, returned and canvassed by said board as in the case of officers in the respective incorporated cities, towns, and villages. **Registration books showing qualified voters must be used as in general election.**"

From the **underlined** portions above, only the qualified electors of the district may vote in such an election, and the general registration books are to be used to determine who are qualified electors. Thus, only those voters whose voting addresses, as shown on the registration books, prove them to be residents of the area within the school district are

entitled to vote in the election. Assuming that Bayard is not within the Santa Rita School District, the first question must be answered "yes", {*8} and the second question must be answered "no."

There is nothing in the statutes relating to the qualifications of directors of independent rural school districts which would require them to be residents of the district. However, Article 5, Section 13 of the New Mexico Constitution provides as follows: "All district, county, precinct and municipal officers, shall be residents of the political sub-division for which they are elected or appointed." In Opinion Number 419, rendered on March 18, 1932, this office ruled that the above constitutional provision was applicable to school district elections, and we see no reason to deviate from this opinion. Therefore, if unless the person residing in Vanadium, referred to in your Question Number 3, maintains his voting residence within the boundaries of the Santa Rita School District he is not eligible to be a member of the board of directors of said district.