

Opinion No. 49-5191

January 27, 1949

BY: JOE L. MARTINEZ, Attorney General

TO: Charles L. Rose Supt. of Public Instruction Santa Fe, New Mexico

{*12} We have your letter of January 19, 1949, in which you request the opinion of this office upon the following:

"Can a secretary of a municipal superintendent be a candidate at a school election for membership on the board that employs her and the superintendent and, if elected, continue to hold the secretarial position?"

Section 55-715 of the 1941 Compilation as amended in 1943 provides as follows:

"No board of regents of state educational institutions, boards of education, board of school directors, nor any member of any said boards, nor any school official nor teacher either directly or indirectly, shall sell, to any school or state educational institution that they are connected with by reason of being a member of a (1) board of regents of a state educational institution, (2) board of education, (3) board of school directors, or any school official or teacher, any school books, school furniture, equipment, apparatus or any other kind of school supplies, property insurance or life insurance to any employee of such school or state educational institution, **or do any work under contract**, nor shall any such board or members thereof, or school officers or teachers, receive any commission or profit on account thereof, and all such persons are prohibited from being parties directly or indirectly to any such contract or transaction. Any person violating the provisions of this section shall be fined not exceeding one thousand (\$ 1,000.00) dollars, or imprisoned not exceeding one (1) year in the penitentiary, or be fined and imprisoned as aforesaid in the discretion of the court."

It is the opinion of this office that the position described in your letter would constitute "work under contract" under the terms of the above quoted section and would be prohibited.

The violation of the Act is declared a felony, and conviction thereunder would subject the board member to removal under the provisions of Section 10-304 (1) of the 1941 Compilation.

We see no objection to the candidacy of a person holding such a position if the position is surrendered upon qualification as a member of the Board of Education.