

Opinion No. 53-5672

February 16, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: John S. Catron Assistant District Attorney Fourth Judicial District Las Vegas, New Mexico

{*64} This is in reply to your letter of February 7, 1953, in which you request an opinion as to whether an employee of the New Mexico State Highway Department can hold the office of member of a municipal board of education.

{*65} Inasmuch as the Highway Department receives Federal funds, employees of that Department come under the Hatch Act.

We have checked the State law and find nothing that makes the two positions, that of Highway employee and member of a municipal board of education, incompatible.

We have checked the Hatch Act and find in Hatch Act Decision, U.S.C.S.C., Chap. 6, p. 47, under heading "Exemptions from Prohibition, A. Nonpartisan Elections", the following:

"An employee subject to Sec. 12(a) of the Hatch Act, or to Sec. 9(a) and the Civil Service Rules, is not prohibited from taking an active part in strictly non-political contests, i.e., those in which no candidate representing a political party participates; or in which public questions involving no alignment of political parties, are submitted to popular vote. Frequently occurring illustrations of the first of these exceptions are election contests for membership on school boards, or for municipal offices in which the system prevailing does not provide for candidates representing political parties. * * *"

On the same page, we also found the following language:

"If a State election law provides for a nonpartisan ballot for a particular local office or class of local offices, or provides that the local office is considered as nonpartisan, there will be a presumption that the election for that office or offices falls within the scope of the first exception of Section 18 of the Hatch Act. However, this presumption may be rebutted by evidence showing that partisan politics actually enter the campaigns of the candidates. This may be shown by the fact that the candidates are nominated or endorsed by State or national political parties, or the local political committee of such a State or national political party."

In view of the above, it is the opinion of this office that if the election for a member of a municipal board of education is a nonpartisan election, that a Highway Department employee can hold such office, however, if the election in which he is elected is not a

nonpartisan election, then he cannot serve. Each case would have to be governed according to the facts and circumstances surrounding it.

We trust that this fully answers your inquiry.

By: Hilario Rubio

Assist. Attorney General