

## Opinion No. 62-41

March 8, 1962

**BY:** OPINION OF EARL E. HARTLEY, Attorney General George Richard Schmitt,  
Assistant Attorney General

**TO:** Carlos Manzanares, La Puente Route, Tierra Amarilla, New Mexico

### QUESTION

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1. May a school teacher run for the office of Justice of the Peace?
2. May the office of Justice of the Peace and position of school teacher be held simultaneously?

#### CONCLUSIONS

1. Yes.
2. Yes, providing a reasonable standard of efficiency shall be maintained with respect to each.

### OPINION

#### ANALYSIS

Rural school supervisors and directors of elementary and secondary schools are prohibited from engaging in political activity under Section 73-9-7, N.M.S.A., 1953 Compilation (PS) and Section 73-12-12, N.M.S.A., 1953 Compilation, but nowhere in the Constitution or the laws of New Mexico have we been able to discover a similar provision pertaining to school teachers.

According to our analysis of New Mexico law on the subject, it is our conclusion that a school teacher may be a candidate for the office of Justice of the Peace providing he qualifies, pursuant to the following Constitutional and Statutory provisions.

Since a Justice of the Peace is a precinct officer, as held in **Territory ex. rel. Welter v. Witt**, 16 N.M. 335, 117 Pac. 860, he must be a resident of the political subdivision for which he is elected or appointed. See Art. 5, Section 13, Constitution of New Mexico (PS). He must also be a citizen of the United States, a resident of the State and a qualified elector therein. See Art. 7, Section 2, Constitution of New Mexico.

If any person desiring to run for the office of Justice of the Peace meets the above qualifications, he may be a valid candidate.

With respect to the second question, we are faced with the possible problem of incompatibility of two offices, such question arising under Section 5-3-1, paragraph 8, N.M.S.A., 1953 Compilation, which declares that a local office becomes **vacant** when an officer accepts and undertakes the duties of another incompatible office.

However, it is very likely that Section 5-3-1, paragraph 8, N.M.S.A., 1953 Compilation, is inapplicable in this instance since in all probability a school teacher is considered an employee rather than an officer.

A school teacher is hired by the school Board of Education, see Section 73-9-7, N.M.S.A., 1953 Compilation (PS), by the Board of School Directors in independent rural school districts, see Section 72-9-14, N.M.S.A., 1953 Compilation (PS), or by the Municipal Board of Education, see Section 73-10-2, N.M.S.A., 1953 Compilation.

Since school teachers' contracts are with political subdivisions of the State and their duties purely local in character, they are to be considered as local employees, as we previously held in Attorney General Opinion No. 4645-1945.

Even if it were argued that the position of school teacher was in the nature of an office, we do not believe that the function of Justice of the Peace and school teacher are incompatible under the test announced by our Supreme Court in **Haymaker v. State**, 22 N.M. 400, 403, 163 Pac. 248, set out as follows:

"In legal contemplation, incompatibility between two offices is an inconsistency between the functions of the two. The offices must subordinate, one to the other, and they must, per se, have the right to interfere with the other before they are incompatible."

Of more paramount importance is whether or not the performance of these two positions simultaneously would furnish proper grounds for revoking a teacher's certificate under Section 73-1-7, N.M.S.A., 1953 Compilation, or approximate "good cause" for discharge of a teacher under a legal contract by the State Board of Education, pursuant to Section 73-12-15, N.M.S.A., 1953 Compilation.

This particular point was brought out in Attorney General's Opinion No. 6473-(1956), copy of which is attached. It was concluded in this opinion that so long as the candidacy for public office does not interfere with proper performance of duties as a teacher, it is not ground for dismissal. However, it was also noted that in some instances the courts have held that a Board of Education may require a teacher to go on temporary leave of absence during the period of candidacy, but meanwhile protecting tenure and contract rights.

The above opinion was limited to a ruling on "effect of candidacy for public office" but the principles advanced are obviously more in point in this instance which also concerns

the possible holding and performing of the duties in the office of Justice of the Peace after a successful candidacy.

In view of the foregoing authorities, it can perhaps be safely determined that the individual concerned may hold the office of the Justice of the Peace and a school teacher's position simultaneously, so long as he continues to maintain a reasonable standard of efficiency with respect to each.