

Opinion No. 64-413

January 21, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Thomas A. Donnelly Assistant Attorney General

TO: Mrs. Wynema Tully, President, Board of Education, Ruidoso Municipal Schools, Glencoe, New Mexico

QUESTIONS

Can a duly elected member of the Board of Education of a municipal school district remain on the Board after moving out of the school district?

CONCLUSION

See analysis.

OPINION

ANALYSIS

The issue presented is governed in part by several statutory and constitutional provisions. Section 73-10-4, N.M.S.A., 1953 Compilation, provides:

"The said board shall be composed of five members, residents of the district, who shall be elected for a term of six years from March 1st succeeding their election. They shall serve without pay . . ." (Emphasis supplied).

Article V, Section 13, of the New Mexico State Constitution, sets out:

"All district, county, precinct and municipal officers, shall be residents of the political subdivisions for which they are elected or appointed." (Emphasis added).

In addition to the above cited statutory and constitutional provisions, Section 5-3-1, N.M.S.A., 1953 Compilation, also has application to the question {2} posed. This section states in part:

"Any officer belonging to the class mentioned in Section 3954 (5-3-3, N.M.S.A.) becomes vacant under any of the following circumstances: . . .

5. When the officer removes from the county in which he is elected and in case of municipal officers, when he removes from the town of city for which he is elected;

6. Absence from the county for six consecutive months, and in cases of municipal officers, absence for such length of time from the village, town or city for which he is elected; but this provision does not apply to those officers wherein the law provides that the duties may be discharged by a deputy, when such absence is due to illness or other unavoidable cause . . ."

As stated in our prior Attorney General's Opinion No. 60-152 dated August 15, 1960, Section 5-3-1, supra, has application to a school board member elected pursuant to Section 73-10-4, supra. A copy of such opinion is included herewith for your study. In *State ex rel Hannah v. Armijo*, 37 N.M. 423, 24 P.2d 274, the New Mexico Supreme Court held that the term "district" as employed in Section 5-3-3, N.M.S.A., 1953 Compilation, includes school districts.

Under the above {*3} authorities it is our opinion that it is a prerequisite for holding such office that the individual municipal school board member be a bona fide resident of the municipal school district, and that upon actual removal from such district for a period of six months or more such office becomes vacant by operation of law. Following the expiration of such period, if a resignation has not been sooner received, the vacancy may be declared by the majority of the remaining members of the municipal school board and they may proceed to fill such vacancy pursuant to Section 73-10-2, N.M.S.A., 1953 Compilation.