

Opinion No. 16-1781

April 13, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Rupert F. Asplund, Chief Clerk, Department of Education, Santa Fe, New Mexico.

No vacancy occurs in a district school board unless the member moves out of the county.

OPINION

{*353} I have before me your letter of yesterday in which you ask me to give you a brief formal opinion with reference to the question of whether a person can serve as a member of the school board of a district, even though he has moved out of the district for which he had been elected during his term, provided he does not move out of the county.

By Section 13 of Article V of the Constitution it is provided that all district, county, precinct and municipal officers shall be residents of the political sub-division for which they are elected or appointed. It is my opinion that this refers only to the qualification of the officer at the time of his election, and in the absence of any legislative provision that removal from the political sub-division for which he has been elected, will have the effect of vacating the office. I believe that removal from such sub-division cannot be allowed to have the effect of creating any vacancy in the office. We have statutory provisions as to how an office may become vacant, which you will find in Section 3956 of the Codification, and by the fifth sub-division of that section it is provided that an office becomes vacant when the officer removes from the county in which he is elected, and in the case of a municipal officer, when he removes from the town or city for which he is elected. I believe this is the only legislative provision on the subject, and it seems applicable to the office of a school district director, so that the only removal on his part which would effect a vacancy is a removal from the county.