

Opinion No. 32-437

April 15, 1932

BY: E. K. Neumann, Attorney General

TO: Mrs. Evelyn C. Reed, Secy., Educational Budget Auditor, Santa Fe, New Mexico.

{*154} In your letter of April 14, 1932 you ask for an opinion upon the following:

"Can a person who is receiving payment for his services as President of a County Board of Education receive, at the same time, payment as a Budget Commissioner."

If a person may at the same time legally hold the office of member of the County Board of Education and of School Budget Commissioner, he would, in my opinion, be entitled to draw pay for both offices. However, he cannot hold both of these offices, if they are incompatible. (See 97-107, 1929 Code).

The term "incompatibility" has been defined in Haymaker vs. State, 22 N.M. 400, as follows:

"Incompatibility between offices is inconsistency between the functions thereof, as where one is subordinate to the other, or where a contrariety and antagonism would result in the attempt by one person to faithfully and impartially discharge the duties of both. HELD that office of member of a city board of education and clerk thereof are incompatible."

The school Budget Commissioners, together with the Educational Budget Auditor, fix the budget allowances for the schools of the county. (Sec. 120-601, 1929 Code). The County Board of Education has Supervision and control of rural schools and districts of the county with authority to enter into contracts involving the expenditure of funds of such schools or districts. (Ch. 119, Laws of 1931).

Consequently, it is my opinion that the two offices are incompatible, and that your question should be answered in the negative.

By: Quincy D. Adams,

Asst. Attorney General