

Opinion No. 41-3712

February 12, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. F. A. Bookshier, Supt. Maxwell Public School Maxwell, New Mexico

{*32} This will acknowledge receipt of your letter of February 8 wherein you request an opinion on the following question. I quote from your letter:

"I should like to have an opinion regarding the legality of a school board member's continuing to serve and vote in board meetings in the district in which he was elected when he has since that time moved to another town in another district."

Section 96-105, New Mexico Statutes, Annotated, 1929 Compilation, reads in part as follows, to-wit:

"Any * * * district * * * officer elected by the people, and any officer appointed to fill out the unexpired term of any such officer, may be removed from office on any of the grounds mentioned in this chapter and according to the provisions hereof."

Section 96-107, New Mexico Statutes, Annotated, 1929 Compilation, reads in part as follows, to-wit:

"Office -- When becomes vacant. Any office belonging to the class mentioned in section 3954 (96-105) 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 or city for which he is elected; * * *"

Our Supreme Court in the case of State vs. Armijo, 37 New Mexico 423, specifically held that the use of the word "district" in the statute first above quoted, specifically applies to school districts. In view of this fact and reading the language used in Section 96-107, it would seem at first blush that such a condition would automatically create a vacancy in {*33} said office. Our Supreme Court, however, in the case of Haymaker vs. State, ex rel McCain, 22 N.M. 400, after quoting Section 96-107, New Mexico Statutes, Annotated, 1929 Compilation, in its entirety said:

"The section can be said only to define vacancies in office. Since the adoption of the Constitution no public office becomes vacant, in the sense that there is no incumbent to fill it, except in the case of death, perhaps, because under section 2 of article 20 of the state Constitution, every officer holds until his successor qualifies, except when he is removed. That section was construed in Bowman Bank & Trust Co. v. Bank, 18 N.M. 589, 139 Pac. 148, wherein the court declared that all officers held office until their successors qualified."

Assuming that the party about which you speak in your letter has lost his residence in said district and permanently removed himself therefrom, in view of the foregoing statutes and rulings by our Supreme Court, it is my opinion that said school board member may legally continue to serve as a member of such board until his successor in office by proper appointive or elective power has duly qualified for the office.

We trust that the foregoing sufficiently answers your inquiry, and may we say in closing that we shall appreciate it if henceforth you will make your request for opinions through the office of the State School Superintendent.

By HOWARD F. HOUK,

Asst. Atty. General