



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

June 20, 1957

Honorable J. W. Edgar
Commissioner of Education
Texas Education Agency
Austin, Texas

Opinion No. WW-165

Re: When must a person running for the State Board of Education resign from her position as a trustee of a local school district?

Dear Dr. Edgar:

Your request for an opinion dated May 24, 1957, reads in part as follows:

"A person who is currently serving as trustee of an independent school district of this State is contemplating running for the office of membership on the State Board of Education. This person inquired: When must a person running for the State Board of Education resign from her position as a trustee of a local school district:

"1. At the time she announces as a candidate for the State Board of Education?

"2. At the time of the Democratic Primary?

"3. At the time of the General Election?

"4. At the time of taking office as a member of the State Board of Education?"

We understand from your letter that the person posing the inquiry intends to seek the nomination of the Democratic Party and then as the nominee of said party, seek election to the State Board of Education at the next ensuing General Election.

Section 9 of Article 2654-2, Vernon's Civil Statutes, provides in part as follows:

"No person who holds an office under the State of Texas or any political subdivision thereof . . . or any person engaged in organized public educational activity, shall be eligible to serve on said Board or be elected thereto. . . ."

A school district is a political subdivision of the State. Woodson Independent School District v. State, 130 S.W. 2d 1038 (Tex.Civ.App. 1939). Therefore, a member of a local school board, pursuant to the foregoing statute, cannot serve on or be elected to the State Board of Education. It is clear that this disqualification can be removed by a timely resignation from the school board. The primary question is when must such resignation occur.

We are denied the benefit of any court decisions or prior opinions by this office dealing with the statute here in question or a statute of similar import.

Section 5 of Article 2654-2, provides in part:

"At the general election in 1950 there shall be elected, in conformity with the general election laws of this State, from each of the Congressional Districts, one (1) member of the State Board of Education. . . . At the general election in 1952 and at each general election thereafter, members shall be elected, . . ." (Emphasis added).

The foregoing statute expressly provides that members of the State Board of Education are elected at the general election. On the other hand, it has been held that the primary election is not an election for an office. 15 B Tex.Jur. p. 427; Carter v. Tomlinson, 227 S.W.2d 795; Chandler v. Neff, (D.C. Tex. 1924) 298 F. 515.

Since a person running for the State Board of Education is elected at the general election and Section 9 of Article 2654-2 merely precludes a person from being elected to said board who holds another designated office, it is our view that this disqualification can be removed by a resignation from the latter office at anytime prior to the date of the general election.

SUMMARY

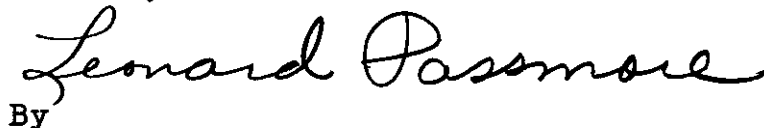
A person seeking election to the State Board of Education who holds the office of trustee of a local school district, may qualify for election to said

Honorable J. W. Edgar, page 3 (WW-165)

Board by resigning as school trustee at
any time prior to the date of the general
election.

Yours very truly,

WILL WILSON
Attorney General of Texas



By
Leonard Passmore
Assistant

LP:zt:wb

APPROVED:

OPINION COMMITTEE:

H. Grady Chandler, Chairman
Jas. H. Rogers
John H. Minton, Jr.
Jack Goodman

REVIEWED FOR THE ATTORNEY GENERAL
BY: Geo. P. Blackburn