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ARIZONA ATTORNEY GENERAL

August 30, 1949

Myron R. Holbert
Supervisor of Indian Education
Department of Public Instruction
Capitol Building
Phoenix, Arizona

Dear Mr. Holbert:

We have your request for our opinion concerning the appointment of a Supervisor of Indian Education and particularly as to whether the State Board of Education may legally establish a term of five or six years for this position.

While we believe that, due to the nature of the duties of this position, a longer term than two years is highly desirable, the appointment by the Board is controlled by law.

The Board of Education is composed of the Governor, the Superintendent of Public Instruction, the President of the University, Principals of State Normal Schools, a Principal of High School, a City School Superintendent, and a County School Superintendent, the latter three appointed by the Governor. (Const. Art. 11, Sec. 3).

It is obvious that this Board exists for only two years, as the Governor and his appointees and the Superintendent of Public Instruction hold two-year terms, leaving only a minority consisting of the President of the University and the Principals of the two colleges as the three permanent members.

There is no Arizona statute directly in point, however text books are generally in agreement that

appointments of subordinates may not extend beyond the term of the appointing officer. 43 Am. Jur. Sec. 292, p. 102, uses this language:

"In respect of employment, the general rule is that contracts of employment for a period beyond the term of the employing board are not valid. The principle is of particular importance where the nature and character of an employment are such as to require a board or officer to exercise a supervisory control over the appointee, or such as to involve a personal relationship between the board and the employee."

This rule was stated by the Arizona Supreme Court in Olmstead & Gillelen v. Hesla 24 Ariz. 546, as follows:

" * * * The general rule is that contracts extending beyond the term of the existing board (county board) and the employment of agents or servants of the county for such a period, thus tying the hands of the succeeding board and depriving the latter of their proper powers, are void as contrary to public policy, at least in the absence of a showing of necessity or good faith and public interest."

The same principle was again voiced in Pima County v. Grossetta 54 Ariz. 530, 97 P. (2) 538, where the court said:

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" * * * If, on the other hand, the contract is for the performance of personal or professional services for the employing officers, their successors must be allowed to choose for themselves those persons on whose honesty, skill and ability they must rely. * * * "

Also: Tempe v. Corbell
17 Ariz. 1
147 P. 745.

It is therefore our opinion that any contract for your services made by the Board of Education with you which extended beyond the terms of the Governor and State Superintendent of Public Instruction would have no binding effect upon the new board which takes office in January, 1951.

Regretting our inability to give you a more favorable answer, we are

Very truly yours,

FRED O. WILSON
Attorney General

PERRY M. LING
Chief Assistant
Attorney General

PML/bf