

Opinion No. 53-5693

February 27, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Edward M. Hartman State Comptroller Santa Fe, New Mexico

{*85} This is in reply to your letter of February 19, 1953 in which you request two opinions; first, as to whether or not it is possible, in accordance with Sections 14-1504 and 14-1509, New Mexico Statutes Annotated, 1941 Compilation, for the three remaining members of the board of trustees to transact business in the absence of the mayor; and whether or not it is necessary to appoint an acting mayor at each future meeting in the event the mayor does not attend.

Section 14-1504 specifically provides that in the absence of the mayor, any trustee may preside at the meetings of the board of trustees.

{*86} Section 14-1509 makes it mandatory that any three members of the board of trustees shall constitute a quorum for the transaction of business and, in the absence of a mayor, a member shall be elected to preside. It is, therefore, the opinion of this office that in view of the two above quoted portions of Sections 14-1504 and 14-1509, N.M.S.A., 1941, that in the absence of the mayor three of the board of trustee members constitute a quorum and can transact business. Further, they can select the presiding trustee who shall act in the place of the mayor at every meeting, if they so desire.

Your second question concerns the feasibility of making an appointment to fill the vacancy left by the deceased member of the board of trustees, if only the three members are present at the meeting when such action is contemplated.

Section 14-1605, N.M.S.A., 1941, reads as follows:

"All vacancies occurring by death, disability or resignation of any city council, or board of aldermen, or board of trustees of any incorporated city, town, or village, shall be filled by appointment by the mayor of such city, town or village, by and with the advice and consent of the city council or board of aldermen or board of trustees, as the case may be, the person so appointed to hold his office until the election and qualification of his successor at the next succeeding municipal election."

The above statute makes it mandatory on the mayor of such city, town or village to make the appointment of another trustee when a vacancy has been created by death. Said appointment, however, to be by and with the advice of the board of trustee members.

It is the opinion of this office that in view of the above quoted statute, that only the mayor can make the appointment of a town trustee where a vacancy has been created

by death. No other town trustee could make the appointment. However, the three trustees constitute a quorum and they could proceed to transact business.

We trust that this fully answers your inquiry.

By: Hilario Rubio

Assist. Attorney General