

Opinion No. 54-5983

June 28, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Floyd Santistevan Assistant Superintendent of Public Instruction Department of Education Santa Fe, New Mexico

{*441} In your letter dated June 22, 1954, you state that a certain board of county commissioners organized at its first meeting in January 1953 and elected one member as chairman of the board and that within the past few days the two members of the board have replaced the chairman. You are concerned due to the fact that the chairman of the board of county commissioners is a member of the commission which appoints new members of the Board of Education and fills vacancies on the County Board of Education. You request an opinion concerning the validity of the removal of the chairman of the board of county commissioners from that position during his term.

§ 15-3507, 1941 Compilation, provides as follows:

"Said board of county commissioners shall meet at the county seat of every county on the first Monday in January, April, July and October in each year and at such other times as in the opinion of the board the public interest may require."

§ 15-3509, 1941 Compilation, provides:

"They shall at the first meeting after their election choose one of their number as chairman, who shall preside at such meeting and all other meetings during the year if present, but in case of his absence from such meeting, the members present shall choose one of their number as temporary chairman."

Based upon a statute similar to § 15-3509, in the case of Pritchard vs. McBride, 154 P. 624, 38 Idaho 348, the Court stated:

"It seems to us that it was clearly the intention of the Legislature, from the foregoing sections of the statute, to provide for the selection of a permanent chairman at the first meeting of the board, whose right to preside at all meetings should extend during his term of office as county commissioner, unless he voluntarily resigned as chairman of said board, or was removed from, or ceased to be a member of, the board."

In State vs. Wichman, 279 P. 937, 52 Nev. 17, the Nevada Court cited the foregoing case with approval and used this language in connection with the same problem:

"And it is clear that it was the intention of the Legislature that, upon the incoming of a new board, a chairman should be elected. It is also clear that it was the intention that such board should organize for the period of its existence, * * *."

The language "who shall preside at such meeting and all other meetings during the year if present" might be considered as limiting the term of the chairman to one year. However, it is felt that this language merely relates back and refers to § 15-3507 setting forth the regular meetings to be held during any year and does not limit the term of the chairman to one year when his term of office as county commissioner is for two years.

From the foregoing, it is our opinion that when a board of county commissioners organize at its first meeting and elects a chairman of the board, such chairman is elected for ~~{*442}~~ his term of office, being two years, and that the members of the board cannot legally remove such chairman and he remains the chairman of the board during his term unless he resigns as chairman or ceases to be a member of the board.

By: C. C. McCulloh

Assist. Attorney General