

Opinion No. 56-6517

September 14, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Hon. Levi Alcon, Mora County Representative, Mora Route, Box 123, Sapello, New Mexico

You have requested an opinion of this office as to the meaning of § 73-9-1, N.M.S.A., 1953 Comp., the first sentence of which reads as follows:

"County boards of education shall consist of five (5) members, who shall be legally qualified electors, and no more than three (3) of whom shall belong to the same political party."

You specifically inquire as to whether or not this means that the elected superintendent should determine which is to be the majority party of the particular school board, so that the appointive members would have to be appointed two from each political party.

It is the opinion of this office that if the clear intent of the statutes is carried out, it would be necessary to appoint two members from each of the political parties, thus allowing the elective member, to-wit: the county school superintendent, to let the party with which he is affiliated determine the majority of the board.

It would appear that if it were possible to appoint three members from the party other than the one with which the county school superintendent is affiliated, this would make it possible in the event of his resignation, or in the event of a future election, to have four members serve from one political party and only one from the other, if the county school superintendent's predecessor was affiliated with the other political party.

The statute is silent on this; however, I think it is only logical that the appointing power should appoint two of each political party. If the above hypothetical case resulted, so that four members would be from one political party, it would clearly violate the intent and the actual terms of the statute. The question then would rise as to how to correct the situation in which one of the four members could be removed from office. There is definitely no provision in the statute for removal of any member without cause. Thus the situation might continue contrary to the statute for an indefinite period of time.

I hope this completely answers your inquiry.