

Opinion No. 57-293

November 13, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Honorable Georgia L. Lusk, Superintendent of Public Instruction, Santa Fe, New Mexico

QUESTION

QUESTION

Does the chairman of a municipal board of education have authority to vote, along with other remaining members of said board, to fill a vacancy thereon?

CONCLUSION

Yes.

OPINION

ANALYSIS

Your question is governed by the last sentence of § 73-10-2, N.M.S.A., 1953 Compilation, which provides:

"In addition, the municipal boards of education shall have power to fill vacancies in their membership, by a majority vote of the members of the board. the appointee to hold office until the next succeeding election for members of such board."

Since the chairman is a member of the board, and since the statute does not prohibit his voting to fill a vacancy on the board, it logically follows that he is authorized to do so. We think the correct rule, under a statute similar to § 73-10-2, supra, in regard to this question, was stated in *McFarlin v. State*, 272 S.W. 2d 630 (Tex. Civ. App.) at 632, as follows:

"As we understand appellant's brief, he contends that the Chairman of the Board of Trustees was not entitled to cast a vote in the balloting which occurred in the meeting of the board on January 6, 1954, and that since he received a majority of the five votes cast in that meeting, excluding the vote cast by the chairman, he was duly and legally elected trustee at that time, and hence he says there was no vacancy on the board when it met and purported to elect relator on May 3, 1954. We believe this contention is contrary to the express provision contained in Art. 2774a, § 3, Vernon's Tex. Civ. Stats., as follows: 'the members of the board remaining after a vacancy shall fill the same for

the unexpired term.' We find no provision in the law which deprives the president or chairman of the Board of Trustees of a consolidated school district from the right to vote on any issue or matter coming before the board, and it appears to us that the statute which we have quoted expressly imposes upon him the duty as a member of the board remaining after a vacancy, to participate in filling the same for the unexpired term."