

Opinion No. 65-155

August 17, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Roy G. Hill, Assistant Attorney General

TO: Mr. J. T. Gonzalez, Superintendent, Santa Rosa Consolidated Schools, Santa Rosa, New Mexico

QUESTION

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Must a municipal school board call a special election if there is a vacancy on the board and the remaining members are unable to agree on a replacement even though no funds are budgeted for the election.

CONCLUSION

Yes.

OPINION

{*262} ANALYSIS

Section 73-10-2, N.M.S.A., 1953 Compilation (P.S.) makes it mandatory that a special election be called to fill a municipal school board vacancy if the remaining members cannot agree on a replacement. This statute provides in part:

"In the event that the remaining members of the board cannot reach agreement on a replacement to fill any vacancy, or vacancies, for a period of sixty [60] days after said vacancy, or vacancies, has occurred, a special election shall be called within thirty [30] days in the same manner as provided for the election of regular school boards."

You can see from this that the remaining members have sixty (60) days from the date the vacancy occurs to agree on a replacement. {*263} If they cannot do so, a special election must be called within the next thirty days.

The above section has application to and controls in your situation. Section 73-20-6, N.M.S.A., 1953 Compilation (P.S.) gives the governing boards of consolidated school districts the same powers and charges them with the same duties as municipal boards of education and the section specifically provides that "Laws applicable to municipal board member elections shall be applicable and govern the elections of board members in consolidated school districts, except consolidations of rural districts only in counties

where county boards of education are existing." We assume that your system is not within the exception and that the special election must be called.

Since there is no budget item for conducting the election, it will be necessary to proceed under Section 73-3-9, N.M.S.A., 1953 Compilation (P.S.). This section provides for budget alterations as well as budget increases. Items not in the budget may be added if they do not increase the total budget. In order to add such an item you must make a written request to the Chief of the Public School Finance Division who can then authorize the use of money for the added item. If it is necessary to increase the budget total, then authorization must be sought from the Director of the Department of Finance and Administration who has the power to authorize an increase of not more than five hundred dollars (\$ 500). Increases of more than five hundred dollars (\$ 500) may be authorized after the notice and hearing provided for in Section 73-3-9, supra. If there is a lack of funds this will, of course, present another problem. If your school board has this problem, we suggest that you indicate your problem to the Chief of the Public School Finance Division who will, we feel sure, be able to steer you in the right direction to acquire the needed funds.