

Opinion No. 67-63

April 17, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. Matias L. Chacon Attorney Chama Board of Education District No. 19 P.O. Box RR Espanola, New Mexico

QUESTION

QUESTIONS

1. What is the majority required (how many board members), for filling a vacancy in the board, under the provisions of Section 73-10- 2, N.M.S.A., 1953 Compilation?
2. If the necessary majority did not appoint Mr. Leonel Martinez, is Mr. Ross Casados still a legal board member with the right to vote?

CONCLUSIONS

1. A majority vote of the membership of the board.
2. Yes.

OPINION

{*92} ANALYSIS

As we understand the facts, the following transpired. On February 17, 1967 the Board of Education of the Chama Independent School District No. 19 held its regular board meeting, at which time 4 board members were present. Mr. Casados the Chairman of the Board turned in his resignation which was accepted by a two to one vote of the Board.

Based on the Decision in **McCormick v. Board of Education**, 58 N.M. 648, 274 P.2d 299 it is our position that this resignation was effective. The McCormick case states **that in the absence of a statutory provision otherwise**, where a quorum is present a proposition is carried by the majority of the votes case, although some of the members present did not vote.

Therefore technically the resignation of Mr. Casados was effective. However, Article 20, Section 2, New Mexico Constitution, provides as follows:

"Every officer, unless removed, shall hold his office until his successor has duly qualified."

His successor has not duly qualified because of the specific statutory provision contained in Section 73-10-2, N.M.S.A., 1953 Compilation (P.S.). This section reads as follows:

"Municipal boards of education -- Powers -- Name -- Vacancies. -- Except as otherwise provided by law, municipal school districts and the public elementary and high schools therein shall be governed by a board of education in the name of the "Board of Education of the ___ of ___, (city, town or village) New Mexico" and as such, except as otherwise provided, shall have like powers over the schools and districts within its jurisdiction as those possessed by county boards of education over their respective schools and districts. **In addition, the municipal boards of education shall have power to fill vacancies in their membership by majority vote of the members of the board**, the appointee to hold office until the next succeeding election for members of such board. 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 days after said vacancy, or vacancies, has occurred, a special election shall be called within thirty days in the same manner as provided for the election of regular school boards." (Emphasis added).

Since the "successor" to Mr. Casados was not approved by a majority vote of the Members of the Board of Education, the above quoted section was not complied with. In view of this fact, under the constitutional provision mentioned above Mr. Casados is still a member of the Board of Education and has the authority to vote for a person to fill his vacancy. **State v. Hargis**, 179 La. 623, 154 So. 628; **Haymaker v. State**, 22 N.M. 400, 163 P. 248.

We thus have this situation -- in order to fill the vacancy which will result when Mr. Casados' successor is selected it will take a vote of a majority of the members of the Board.

By: Oliver E. Payne

Deputy Attorney General