

## Opinion No. 34-739

March 13, 1934

**BY:** E. K. NEUMANN, Attorney General

**TO:** Mr. J. A. Tadlock, Member, Board of Trustees, Santa Rosa, New Mexico.

{\*122} You verbally requested an opinion of this office today with reference to the powers of the Board of Trustees and Mayors of Villages with reference to the appointment of the registration board and other election officials for the municipal election to be held April 3, 1934.

Section 90-608 and 90-610 provide that the trustees or council of every municipal corporation shall appoint the judges and clerks of municipal elections and it shall be the duty of the board of trustees to appoint a board of registration, and said sections go on to prescribe the manner in which such appointments shall be made and the rights, powers and duties {\*123} of such officers and boards.

Under these Acts the Mayor of a Village has nothing whatsoever to do, in my opinion, with the appointment of such boards. Section 90-608 specifically provides that, after the appointment of the election officials by the Board of Trustees, the Mayor and Clerk shall sign and attest the election proclamation.

You state, however, that the particular problem with which your board is confronted is that some time past the duly elected, qualified and acting Mayor of your municipality resigned after which a member of the board of trustees was elected by such board as Mayor to fill the vacancy so created for the unexpired term and that now the Mayor contends that in cases of Villages he is a member of the board of trustees, and, as such, entitled to vote as such member.

Under Sections 90-3504 and 90-3505 and Sections 90-3404 and 90-3405 such construction would probably be correct. It is to be noted, however, that the first two sections mentioned were enacted in 1909 and the latter two sections mentioned were enacted in 1889, amend in 1905 and re-enacted in 1915 at the time the 1915 Code was enacted by the Legislature. In my opinion these mentioned Sections have been superceded, in so far as the right of the Mayor to vote as a member of the board of trustees is concerned, by Chapter 111 of the Sessions Laws of 1919, now found in the 1929 Code as Article 29 of Chapter 90 thereof, and that, under said Act of 1919, the Mayor has no power to vote as a member of the board of trustees.

Our conclusion in this matter is reached after a careful study of the wording in Sections 90-2901 and 90-2902 being, as heretofore indicated, a part of Chapter 111, Laws of 1919, wherein it is provided that the Mayor of any incorporated City, Town or Village shall be the chief executive officer thereof and that the city council or board of aldermen or board of trustees of any incorporated City, Town or Village shall constitute the

legislative branch of the City, Town or Village Government and shall not perform any executive functions of government. Certainly, if the Mayor is the executive officer of the City, Town or Village and the board of trustees is the legislative branch of the City, Town or Village, the Mayor is in no position to perform legislative functions any more than is the legislative branch entitled to perform any of the executive functions of government.

The Sections heretofore cited, 90-608 and 90-610 provide that the appointment of the election officials and the boards of registration for any municipal election are a legislative function, to be performed by the board of trustees. The 1919 Law separates city government into legislative and executive departments, even as does the Constitution of the State divide the government of the State into legislative, executive and judicial departments, and, under any rule of law, no such department shall perform any of the functions of another department.

I believe that some time ago this office did write to one Dr. J. H. Sanford of Santa Rosa a letter wherein we expressed our opinion to be that the Mayor of a Village might vote upon all questions coming before the board of trustees. We believe, however, this office to have been in error for reason that we considered only Sections 90-3504 and 90-3505 of the 1929 Code and did not consider Article 29 of said Chapter 90, which, as we have stated, is Chapter 111 of the Laws of 1919 and which we believe supercedes the sections we relied upon for our opinion given to Dr. Sanford.

While it is true that the 1919 Act did not specifically repeal the older acts mentioned and that repeal by implication is not favored in statutory construction, when the later act is in conflict with earlier acts all rules of construction concede that the earlier acts are repealed by implication. We feel that the 1919 Act, with reference to the matter herein mentioned, is in absolute conflict with the earlier acts and consequently, under the rules of construction mentioned, must govern in construing the two parts of our laws.

Being only human, of course, we dislike to reverse ourselves, but we believe that a more careful study and analysis of the questions involved {*\*124*} lead us to the opinion herein expressed, and we must, therefore, retract our former opinion.