

Opinion No. 42-4181

November 10, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Mr. R. H. Grissom Educational Budget Auditor Santa Fe, New Mexico

{*273} We are in receipt of your letter of November 6, 1942, in which you enclose a letter from Mr. W. W. Stuart, Superintendent of Grants Union High School, wherein he asks if the present school board of this union high school is legally constituted and if not, what steps should be taken to correct this situation.

From his letter, it appears that there is a contest between Tomas Murrietta and Lincoln Chavez for membership on the San Rafael rural school district board; that for this reason, the San Rafael board has not appointed a new member to the union high school board, and that Santiago Ortiz, although not re-elected to the San Rafael board, still serves on the union high school board.

With the limited facts set forth in Mr. Stuart's letter, I cannot give a categorical answer to these questions. However, I can set down the general rules by which the Grants Union High School Board should be guided.

Our Supreme Court, in the case of Haymaker v. State ex rel McCain, 22 N.M. 400, held, with respect to vacancies in public office, that:

"Since the adoption of the Constitution no public office becomes vacant, in the sense that there is no incumbent to fill it, except in the case of death, perhaps, because under section 2 of article 20 of the state Constitution, every officer holds until his successor qualifies, except when he is removed. That section was construed in Bowman Bank & Trust Co. v. Bank, 18 N.M. 589, 139 Pac. 148, wherein the court declared that all officers held office until their successors qualified."

In the light of this case, it appears that Santiago Ortiz is still a member of the San Rafael rural school board, and will continue to be a member until his successor qualifies for that office.

Section 120-104, New Mexico Statutes Annotated, 1929 Compilation, governing the naming of union high school boards, provides in part:

"The union district shall delegate one of its members as a member of the union high school board, and he shall hold such delegated office at the pleasure of the board appointing him, so long as he shall remain a member of the first named board."

Under the provisions of this section Santiago Ortiz, still being a member of the San Rafael board, may legally serve as a member of the union high school board until a new

member is appointed by the San Rafael board, or until one or the other of the contestants for the San Rafael board qualifies for that office. It will also be noted that there is no requirement that a new union high school board be designated, the members holding such office at the pleasure of the respective rural and municipal boards, so that the designation of new members to the union board is entirely up to the rural and municipal boards. However, from the facts given, I see no reason why a new union high school board cannot be organized, if the respective rural and municipal boards wish to do so.

It appears that all members of the Grants Municipal Board are duly qualified and elected, and that two of the three members of the San Rafael Board are duly qualified and elected. Under these circumstances, a quorum of the members of the San Rafael board can elect a new member to the union high school board or not, as they see fit. There being no statute {*274} in New Mexico, to the knowledge of the writer, setting forth what constitutes a quorum, the general rule as quorums set down in 56 C. J. 336 will apply. This rule is as follows:

"No action can be taken by a school board unless a quorum thereof is present; but any power of the board may be exercised by a quorum thereof at a meeting properly called or held. **Unless otherwise provided by statute a majority of the members constitutes a quorum**, and fewer than a majority of the members of a board are without power to transact any official business."

Thus, the San Rafael board (as well as the Grants municipal board) can meet with or without Mr. Ortiz and legally appoint such new member to the union high school board, as they see fit.

Trusting that the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD,

Asst. Atty. General