

Opinion No. 46-4865

February 26, 1946

BY: C. C. McCULLOH, Attorney General

TO: Mrs. Georgia L. Lusk Superintendent of Public Instruction Department of Education
Santa Fe, New Mexico

{*196} We are in receipt of your letter of February 25, 1946 and the enclosed letter of the Superintendent of Santa Rosa city schools. You ask us to give our opinion on the two questions propounded in the Superintendent's letter. These questions are as follows:

"1. A duly elected member of the municipal school board was called to active duty in the armed services and in his absence the remaining members of the board selected a man to take his place. When the man returns from the services does he automatically resume his place on the board and the member appointed in his place drop off the board? If the elected member wished the appointed one to serve out his term will it be necessary for him to submit his resignation from the board?

"2. Does the President of a municipal Board of Education have a vote on all matters or is he allowed to vote only in case of a tie?"

In answer to the first question, your attention is directed to Chapter 123 of the Laws of 1943 which provides in part as follows:

"Section 4. The officer, agent, employee, board or other agency of the State, or of its departments, agencies, counties, municipalities or political subdivisions, who is by law authorized to fill ordinary vacancies in the public office or employment so permanently abandoned, as provided in section 3 hereof, is hereby authorized, empowered and directed to appoint to such public office or employment some qualified person who shall thereafter receive the salary and perform the duties thereof until the expiration of the term of the former incumbent or until his successor shall have been elected, appointed or otherwise chosen and qualified or until the former incumbent shall have been relieved from active duty in the armed services **and shall have resumed the personal discharge** of the duties of such public office or employment."

You will note from this section that the reinstatement is not automatic and that the appointed officer holds until the incumbent shall have resumed personal discharge of the duties.

It is, therefore, my opinion that when the incumbent returns from service he does not automatically resume his place on the board. It is further my opinion that it is not necessary for him to submit his {*197} resignation from the board in order to permit the

appointed member of the board to serve. All that is necessary is that he fail to resume personal discharge of the duties.

In answer to the second question, your attention is directed to Section 55-906 of the 1941 Compilation which provides that a president etc. . . . shall be elected from the members of the board. As the president is a member of the board and as there is no statute governing the voting by municipal boards of education, it is my opinion that under parliamentary procedure the president as a member of the board is entitled to vote on all matters, whether there be a tie or not. See 46 C. J. 1382.

By ROBERT W. WARD,

Asst. Atty. General