

Opinion No. 54-5970

June 10, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Thos. B. Rapkoch Assistant District Attorney Third Judicial District Las Cruces,
New Mexico

{*428} In your letter dated June 3, 1954, you ask for an opinion relative to the authority of the State Board of Education to appoint the five members of a school board where there is a change from a district school to a municipal school.

By a district school, I presume you mean a rural school. § 55-909, 1941 Compilation, relating to newly incorporated municipalities, provides in part as follows:

"The governing board of each such municipal school, schools, or school district shall consist of five (5) members who shall be selected and who shall respectively hold office and in all things be governed by the law now relating to municipal schools; provided that in event such municipal school, schools, or school district is created subsequent to the date now provided by law for the election of members of municipal school districts, a special election shall be ordered, called, held, conducted and canvassed, as now provided by law, for the selection of members of such municipal school, schools, or school district."

The proviso seems to be clear that a special election shall be called in order to select members of a newly created municipal school district created after the date for municipal school elections and such specific language would prevent the State Board of Education from having any authority to appoint such school board members.

§ 55-903, 1941 Compilation, does give the State Board power to fill vacancies in the event of a resignation of a majority of the municipal school board but this section would not be applicable in connection with newly created municipal districts.

By: C. C. McCulloh

Assist. Attorney General