

Opinion No. 59-139

September 14, 1959

BY: HILTON A. DICKSON, JR., Attorney General

TO: Dr. Donald C. Moyer Executive Secretary Board of Educational Finance P. O. Box 1616 Santa Fe, New Mexico

{*212} This is written in reply to your recent request for an opinion on the following questions:

- "1. Are the Honorable Gordon Melody (Senator, Las Vegas), Honorable William Wheatley (Senator, Clayton) and the Honorable Larry Goodell (Representative, Roswell) currently members of the Board of Educational Finance?
2. In the event that the above named Legislators are ruled to be non-members of the Board of Educational Finance and since the By-laws of the Board (copy enclosed) explicitly state that 'Members of the Board hold office until their successors are appointed and qualified', can these Legislators be considered members of the Board of Educational Finance until their successors are appointed and qualified?
3. Does a quorum of the Board of Educational Finance (the necessary number of members present to do business) consist of a majority of the the statutory membership of the Board (9 members) or does it consist of a majority of the legally qualified membership at any given time?"

In answer to these questions, it is our opinion that:

1. No.
2. No.
3. A quorum consists of a majority of a statutory membership.

Your first question is answered in Opinion of the Attorney General No. 59-93, dated August 10, 1959, wherein it was held that Representative Goodell was not a legal member of the Board of Educational Finance. The standards found in the case of **State ex rel. Gibson v. Fernandez**, 40 N.M. 288, 58 P. 2d 1197, as to what constitutes a civil office are applicable to the Board of Educational Finance. This was pointed out in the above cited opinion. The Fernandez case is analyzed in the Opinion of the Attorney General No. 59-79, dated July 22, 1959. The reasoning in Opinion No. 59-93 is equally applicable to other members of the Board of Educational Finance who are members of the State Legislature. Therefore, these legislators are not not nor were they ever legal members of the Board of Educational Finance.

The answer to your second question is based upon the fact that the above listed legislators never did qualify for membership on the Board since they were ineligible to serve as members. Therefore, since they never in fact became members of the Board they cannot hold over until successors are appointed. This result leaves the membership of the Board as follows:

If the person whose position one of the legislators in question was ostensibly appointed to did not resign or was not removed by the Governor, then that person is still a member of the Board until a successor is appointed and qualifies. This result would only follow if the term of the prior member expired and the present Governor merely appointed one of these legislators to fill that position; if, however, the persons who held the positions now allegedly held by these legislators resigned or were removed by the present Governor, then a vacancy exists in that position on the Board and no person may serve in that position until the Governor appoints a person {213} to fill that position and such person qualifies. This is so by virtue of Article XX, § 2 of the Constitution of New Mexico which reads as follows:

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

The situation of a member of the Board resigning is to be distinguished from the case wherein an official's term expires and he holds over until a successor is qualified. When a member resigns it has the same effect as if he were removed under the constitutional provision above.

The answer to your third question is based upon the provisions of your by-laws which provide:

"Section 4. **Quorum. A majority of the members of the Board** shall constitute a quorum for the transaction of business." (Emphasis supplied)

These words can only mean that a simple majority of the members authorized by statute (73-29-16, N.M.S.A., 1953 Comp.) is required to conduct business. It will be noted that the underlined portion of the by-laws above does not say that a majority of the qualified members of the Board shall constitute a quorum, but rather says that a majority of the members of the Board shall constitute a quorum. If the draftsman of the by-laws had intended to provide for a quorum consisting of a majority of the qualified members, he certainly could have done so in clear language. Since no such intention is evident from the language of the by-laws, it is our opinion that a simple majority of the members authorized under § 73-29-16, N.M.S.A., 1953 Compilation, constitutes a quorum for the Board of Educational Finance.

Copies of the above mentioned opinions are enclosed for your convenience.

By Boston E. Witt

Assistant Attorney General