

Opinion No. 59-204

December 14, 1959

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

TO: Mr. I. V. Lucero County Clerk San Miguel County Las Vegas, New Mexico

QUESTION

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1. Can a County Commissioner other than the Chairman call a special meeting to deal with an emergency or with some matter that may come up for special consideration before a regular meeting is due?
2. If such a special meeting is held and the minutes of the proceedings are read later at the regular meeting, may the Commissioners who concurred in the special meeting approve and sign them if the proper procedures are followed, as motion to approve, second, etc.?

CONCLUSIONS

1. Yes, see opinion.
2. Yes, see opinion.

OPINION

{*315} ANALYSIS

The Constitution of New Mexico has no provisions pertinent to the questions involved.

The New Mexico Statutes which have some pertinence to the questions propounded are:

"15-37-1. EXERCISE OF COUNTY POWERS. -- The powers of a county as a body politic and corporate shall be exercised by a board of county commissioners."

"15-37-2. MEMBERS -- QUORUM. -- The board of county commissioners shall consist of three [3] qualified electors, any two [2] of whom shall be competent to transact business, who shall be elected according to law."

"15-37-7. MEETINGS -- REGULAR DATES. -- Said board of county commissioners shall meet at the county seat of each county on the first Monday in January, April, July

and October in each year, **and at such other times as in the opinion of the board** the public interests may require."

"15-37-9. CHAIRMAN -- APPOINTMENT -- TEMPORARY CHAIRMAN. -- They shall at the first meeting after their election choose one [1] of their number chairman, who shall preside at such meeting and all other meetings during the year if present, but in {**316*} case of his absence from such meeting the members present shall choose one [1] of their number as temporary chairman."

"15-37-10. CHAIRMAN -- POWERS AND DUTIES. -- The chairman of said board shall have power to administer oaths to any person concerning any matter submitted to the board or connected with their powers and duties and he shall sign all orders on the county treasury."

"15-37-11. SEAL -- SESSIONS TO BE PUBLIC -- RULES AND REGULATIONS. -- Every board of county commissioners shall have a seal, or scroll until a seal can be procured, and may alter the same at pleasure. Their sessions shall be public with open doors, and all persons conducting themselves in an orderly manner may attend their meetings, and they **may establish rules and regulations** to govern the transaction of their business." (Emphasis ours)

In § 15-37-7, supra, no mention is made as to who shall be possessed of the authority to call the meetings provided for by the concluding phraseology of said paragraph, to-wit: "and at such other times as in the opinion of the board the public interests may require." Unquestionably such meetings would fall into the category of what are commonly called **special** meetings in contradistinction to the **regular** meetings required by our statute to be held on the first Monday of January, April, July and October of each year.

The Supreme Court of New Mexico has handed down no decisions bearing upon the questions involved herein.

There is a most decided lack of law emanating from the highest appellate courts of our sister states bearing upon the question of who, in the absence of statute, has the authority to call special meetings of a board of county commissioners.

We call attention to § "e", 20 C.J.S., page 861, under the heading "Special Meetings", the fourth unnumbered paragraph of which section reads as follows:

"In some jurisdictions, express provision is made for the calling of special meetings of county boards by designated county officers, who shall determine whether such special session is required by the public interests, and whether such an emergency exists as will justify a shorter notice than that usually required. In other jurisdictions, a special meeting may be called by the president or the chairman of the board, **or** by a majority or other specified number of the members of the board. . . ." (Emphasis ours)

At this juncture we feel it appropriate to quote from **State v. Gallatin County**, (Mont.) 184 P. 2d 1001 paragraph (3):

"[3] Whenever a power is conferred upon the board of county commissioners, but the mode in which the authority is to be exercised is not indicated, the board in its discretion may select **any** appropriate mode or course of procedure. *Franzke v. Fergus County*, 76 Mont. 150, 157, 245 P. 962; *State v. Board of Commissioners*, 106 Mont. 251, 76 P. 2d 648." (Emphasis ours)

In the absence of a statute one way or the other, in answer to your first question, it is our thinking that the two commissioners other than the chairman most certainly possess the authority to call **special** meetings. So far as the chairman is concerned, his power is no greater and no less than the authority possessed by his fellow county commissioners. It so happened that he has been selected by his fellow commissioners to serve as their chairman. As a candidate, {317} both in the primary election and in the general election, his name appeared on the ballot as a candidate for the office of **county commissioner** not as **chairman** of the board of county commissioners.

Attention is now particularly called to that portion of § 15-37-11, supra, which says that a board of county commissioners **may establish rules and regulations** to govern the transaction of their business.

Although in your request you say neither yea or nay as to whether or not your board has adopted **regulations** by virtue of said § 15-37-11, supra, it is not too late for the board to do so. By so doing, it should be able to effectively eliminate any further doubt or uncertainty as to the problems involved. It should be understood, of course, that ample notice must be given to the chairman by the other two commissioners of the date and time of the contemplated meeting.

It follows that our answer to your second question would necessarily also be in the affirmative. The procedure to be followed would be no different than if a **special** meeting were to be called by the chairman which, it could be deduced from your letter, has been the practice in the past. The procedure would be substantially as outlined in your second question.

By: Carl P. Dunifon

Assistant Attorney General