

Opinion No. 60-13

February 1, 1960

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

TO: Mr. Robert L. Guice Extension Soil Conservationist State Soil Conservation Committee P. O. Box 786 University Park, New Mexico

QUESTION

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Under Sec. 45-5-4, N.M.S.A., 1953 Comp., what number constitutes a quorum for the State Soil Conservation Committee?

CONCLUSION

See Analysis.

OPINION

{*353} ANALYSIS

The statute to which you refer reads in germane part as follows:

"(a) . . . The committee shall consist of the chairman and six (6) other members to be appointed by the governor . . . The following shall serve ex officii (ex-officio), as members of the committee; the director of the state extension service; the director of the state agricultural experiment station; and the governor. The committee may invite the secretary of agriculture of the United States of America to appoint one (1) person to serve with the above-mentioned members as a member of the committee. . . .

(c) . . . A majority of the committee shall constitute a quorum, . . ."

{*354} This statute provides that seven members of the committee shall be appointed by the governor. In addition, three persons become members by virtue of their offices -- ex officio. The question first presented is whether these ex officio members should be counted as members of the committee in determining a quorum. Opinion of the Attorney General No. 5408, dated August 29, 1951, decided that ex officio members of boards of the State were entitled to vote on matters before the board unless the empowering statute denies them that right. The statute in question does not take this power away from the ex officio members of the soil conservation committee. On the basis of that prior opinion, we are of the opinion that these ex officio members can vote.

The rule generally is to the effect that a quorum is a certain number of the members of a body who are entitled to vote. See **Bedford County Hospital, et al. v. County of Bedford, et al.**, (Tenn., 1957) 304 S.W. 2d 697, and 74 C.J.S. (Quorum) p. 171. This being true, it is our view that the determination of the number for a quorum should be made on the basis of the ex officio membership as well as the regular membership.

The next question is whether a member who may be appointed by the secretary of agriculture should be included in the determination. As we view the question, it would appear that if that person is appointed, then he is a member with all the power of the remaining members and he would have to be considered in determining a quorum. If, however, such person is not appointed, the statute only makes such appointment discretionary with the committee -- then the position should not be considered in determining the quorum of the committee. However, since the number required for a simple majority would be six in either case -- whether the discretionary member is appointed or not -- such appointment or non-appointment does not need to be considered in determining a quorum for the committee.

By: Boston E. Witt

Assistant Attorney General