

Opinion No. 61-62

July 18, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Norman S. Thayer Assistant Attorney General

TO: Mr. John Block, Jr. Chairman State Corporation Commission Santa Fe, New Mexico

QUESTION

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Is the following by-law of a rural electric cooperative consistent with law?

"These by-laws may be altered, amended, or repealed by a majority vote of the members in a majority of the districts, voting by districts, at any annual or special district meeting or annual or special meeting . . ."

CONCLUSION

See analysis.

OPINION

As will be explained, we believe this by-law is consistent with applicable statutes, depending on how the by-law is interpreted. We do not give it unqualified approval.

First, we must compare two statutes to determine whether the bylaw has any validity. They are Sections 45-4-7 and 45-4-10, N.M.S.A., 1953 Compilation, which read as follows:

"45-4-7. The original by-laws of a cooperative shall be adopted by its board of trustees. Thereafter by-laws shall be adopted, amended or repealed by a **majority of the members present at any regular annual meeting or special meeting** called for that purpose, a quorum being present. The by-laws shall set forth the rights and duties of members and trustees and may contain other provisions for the regulation and management of the affairs of the cooperative not inconsistent with this act or with its articles of incorporation." (Emphasis supplied).

"45-4-10. **Notwithstanding any other provision of this act**, the by-laws may provide that the territory in which a cooperative supplies electric energy to its members shall be divided into two (2) or more voting districts, and that, in respect to each such voting district, (1) a designated number of trustees shall be elected by the members residing therein, or (2) a designated number of delegates shall be elected by such members, or

(3) both such trustees and delegates shall be elected by such members. **In any such case the by-laws shall prescribe the manner in which such voting districts and the members thereof, and the delegates and trustees, if any, elected therefrom shall function**, and the powers of the delegates, which may include the power to elect trustees. No member at any voting district meeting and no delegate at any meeting shall vote by proxy or by mail." (Emphasis supplied.)

While Section 45-4-7 seems to contemplate a meeting of all members of the cooperative, Section 45-4-10 provides, **notwithstanding any other section**, that the co-operative may be divided into voting districts and by-laws may prescribe the manner in which those districts and the members thereof shall function. Therefore, in our opinion it is legal to provide for the amendment of by-laws by a majority vote of the members voting by districts, rather than at a general meeting of all the members. This interpretation does no violence to Section 45-4-7, since that section mentions "regular annual meeting" and "special meeting", and does not exclude a regular annual meeting or special meeting of a voting district. The interpretation is supported by the liberal construction we are required to give these statutes under Section 45-4-32, N.M.S.A., 1953 Compilation, which reads as follows:

"This act shall be construed liberally. The enumeration of any object, purpose, power, manner, method or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods or things."

A vote taken at a series of district meetings is, to our mind, so similar to a vote taken at a general meeting that a by-law providing for voting by districts is valid.

As we said earlier, however, certain interpretations or applications of the by-law in question could be illegal. For instance, the by-law could be taken to mean that the by-law could be amended if a majority of the voting districts favored amendment, even though a majority of the total votes was against amendment. To show that this could happen let us suppose that a cooperative is divided into three voting districts, each having 100 members, and the vote is as follows:

For Against

51 49

51 49

40 60

142 158

In this example, more votes are against amendment, but the majority of voting districts favors amendment.

Or, the by-law in question might be taken to mean that by-laws cannot be amended without the favorable vote of a majority of the voting districts, even though a majority of

the total votes cast favors amendment. To show that this could happen, let us take the same cooperative used in the previous example, with the voting as follows:

For Against

60 40

49 51

49 51

158 142

Here most voters favored amendment, but the majority of voting districts was opposed.

In our opinion, if the by-law in question is interpreted or applied to effect either or both of the examples given, it is illegal in that it is contrary to Section 45-4-7, which provides that the by-laws shall be amended by the **majority of the members**.

In conclusion, it is our opinion that a rural electric cooperative may provide for the amendment of its by-laws by a vote taken at a series of meetings of voting districts rather than at a general meeting of all the members, but, in so doing, it cannot take away the power of the majority of members to adopt, amend, or repeal the by-laws.