

Opinion No. 63-35

April 17, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Mr. Robert M. Duncan Member, Educational Retirement Board Department of Modern and Classical Languages University of New Mexico Albuquerque, New Mexico

QUESTION

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1. May a member of the Educational Retirement Board resign his office?
2. If the resigning member of the board is the member elected by the New Mexico Members of the American Association of University Professors how should the vacancy in the office be filled?
3. Do the members designated to fill the vacancy hold for the full period of the unexpired term?

CONCLUSIONS

1. Yes.
2. See Analysis.
3. Yes.

OPINION

{*74} ANALYSIS

The statute creating the Educational Retirement Board, prescribing the terms of its members and declaring the method of selection is Section 73-12-36, N.M.S.A., 1953 Compilation, (P. S.). Said section provides that the Board shall consist of seven members. Three of the members are: the Superintendent of Public Instruction, the Educational Budget Auditor and the State Treasurer, all of whom serve on the Board during their terms of public office. One member is elected for a term of four years by the members of the New Mexico Educational Association, one member is elected for a term of four years by the New Mexico Members of the American Association of University Professors and two members are appointed by the Governor to serve terms of four years. There is no provision in the statute or in the New Mexico Constitution governing the power of a board member to resign. It is, however, well recognized that any public officer has the right to resign, **People ex rel. Rosenberg v. Keating**, 112 Colo. 26, 144

P. 2d 992. It should be noted, however, that by virtue of Article XX, Section 2, New Mexico Constitution it is required that "every officer, unless removed, shall hold office until his successor has duly qualified." Pursuant to this provision it is clear that the present member of the board will continue in office until his successor is elected and qualified. **Bowman Bank & Trust Co. v. First National Bank**, 18 N.M. 589, 139 P. 148. In order for the successor member to qualify it is necessary that he subscribe to the oath required by Article XX, Section 1, New Mexico Constitution. It is, therefore, our conclusion that despite the fact that no specific provision was included in the statute establishing the board, a member of the board does have the right to resign his office. Where no particular method of resigning is provided by law it is held that no formal method is necessary, or required. We would suggest {*75} that if a resignation is submitted, the Educational Retirement Board should take formal action to accept the resignation.

The second question presented deals with the manner of filling the vacancy created by the resignation. Again, there is no statutory guide by which the board can direct itself.

It is apparent, however, that Section 73-12-36, supra, contemplates continuous representation on the board by a member of the American Association of University Professors. It therefore, appears to be implicit in the statute that if a vacancy occurs due to the resignation of the mentioned member the vacancy should be filled in the same manner as the office was originally filled. We therefore conclude that the New Mexico Members of the Association should conduct an election to select their representative on the board.

In answer to your third question we conclude that the member designated by the Association to fill the vacancy, will hold office for the period of the unexpired term of his predecessor. Section 73-12-36, supra, does not explicitly require this conclusion. It should be noted, however, that said section provided for staggered terms of office for the board with the apparent purpose of assuring continuity in the membership of the board. In order to preserve the normal cycle of turn-over of the board's membership, it is necessary that a member appointed or elected to fill a vacancy shall serve only for the remainder of the unexpired term. This construction of the statute is consistent with the general rule applied to boards of this type.

By: F. Harlan Flint

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