

Opinion No. 71-02

January 11, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: The Honorable James H. Koch New Mexico State Representative Legislative-Executive Building Santa Fe, N.M. 87501

QUESTIONS

QUESTION

If an individual were appointed to the Board of Regents of a state educational institution after the last legislative session and such person has not been confirmed by the State Senate, would the Governor have the authority to appoint someone else to the office and submit the latter's name for confirmation by the State Senate?

CONCLUSION

Yes.

OPINION

{*3} ANALYSIS

Appointment of members to a board of regents for one of the state education institutions enumerated in Article 12, Section 11, New Mexico Constitution is governed by Article 12, Section 13, New Mexico Constitution. That section provides in pertinent part that:

"The governor shall nominate **and by and with the consent of the senate shall appoint** the members of each board of regents for each of said institutions." (Emphasis added.)

Thus the office of member of a board of regents is one covered by Article 20, Section 5 when a vacancy occurs. This section provides in its entirety as follows:

"If, while the senate is not in session, a vacancy occurs in any office the incumbent of which was appointed by the governor by and with the advice and consent of the senate, the governor shall appoint some qualified person to fill the same **until the next session of the senate**; and shall then appoint by and with the advice and consent of the senate **some qualified person** to fill said office for the period of the unexpired term." (Emphasis added.)

Such an interim appointment is effective when the person duly qualifies for the office. But by the express constitutional provision just quoted, his appointment is only for the

period of time until the next legislative session. He will hold his office though until he or "his successor has duly qualified." N.M. Const. art. 20, § 2. That, of course, means until the senate acts favorably on a gubernatorial nominee for the office.

Since the recess appointment is for a definite term, i.e., "until the next session of the senate," the governor is not **required** to submit the name of the interim appointee to the senate; he could submit the name of some other "qualified person" for confirmation by the senate. If the senate acts favorably on the governor's nominee, that person will then hold the office "for the period of the unexpired term." N.M. Const. art. 20; § 5.

By: Oliver E. Payne

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