

## Opinion No. 71-120

December 7, 1971

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** The Honorable Daniel Lyon New Mexico State Representative 808 Silver Avenue,  
S.E. Albuquerque, New Mexico

### QUESTIONS

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1. Under the existing law and Constitution, may the governor appoint a student enrolled at the University of New Mexico as a member of the Board of Regents of that institution, assuming that a legitimate vacancy existed and further assuming that the student was a qualified elector of the state?
2. Under the existing law and Constitution, may the governor appoint one or more students enrolled at the University of New Mexico as advisory members of the Board of Regents without vote but with the privilege of participation in the meetings of the Regents?
3. May the Legislature enact a law establishing the advisory membership status specified in question 2 without regard to whether the governor has the power to act in the absence of the legislative directive?

#### CONCLUSIONS

1. Yes.
2. Yes.
3. Yes.

### OPINION

#### {\*184} ANALYSIS

Article XII, Section 13 of the New Mexico State Constitution provides requirements for members of the Boards of Regents for educational institutions in this state. That Article sets forth in part the following requirements:

{\*185} "The legislature shall provide for the control and management of each of said institutions by a board of regents for each institution, consisting of five [5] members,

who shall be qualified electors of the state of New Mexico, no more than three [3] of whom at the time of their appointment shall be members of the same political party."

Clearly the only requirements set forth in the Constitution for members of Boards of Regents are that they be qualified electors of the state and that they be of varying political parties. Other provisions relating to members of Boards of Regents are at Section 73-30-11, N.M.S.A., 1953 Comp. and Section 73-30-14, N.M.S.A., 1953 Comp. The first of these sections states that "at least one [1] member of the said several boards shall be a resident of the town or city at or near which the institution is located." The second relates to the requirement that each member of a Board of Regents take and subscribe an oath to faithfully and honestly discharge his duties. It is obvious that none of these requirements would prohibit the Governor from appointing a student enrolled at the University of New Mexico as a member of that Board of Regents. Assuming that a legitimate vacancy existed and that the student was a qualified elector of New Mexico the Governor may appoint a student enrolled at the University as a member of the Board of Regents of that institution.

The powers of the Governor are generally conferred by the Constitution and statutes. Such is the Governor's power to make appointments to public office. This power must be derived from the Constitution or statutes, otherwise, he may not possess it. **Buchholtz v. Hill**, 178 Md. 280, 13 A.2d 348 (Ct. App. 1940); **Briggs v. McBride**, 17 Or. 640, 21 P. 878 (1889). See 38 Am. Jr. 2d § 5.

Where, as in the instant case, the legislative mandate is specifically directed toward the Governor being an ex-officio member of the Board of Regents, Section 73-30-9, N.M.S.A., 1953 Comp., it is clear that the Governor cannot delegate such authority to another person. And, without further mention in either the statutes or Constitution of ex-officio membership in the Boards of Regents, the Governor cannot create such membership. One logical reason for such a rule is that the presumption usually prevails that where a duty is conferred upon the chief executive of the state rather than upon an inferior officer, it is because his superior judgment, discretion and sense of responsibility are relied upon for a more accurate, faithful and discrete performance.

However, while ex-officio membership cannot be granted without specific legislative or constitutional authority, our laws in no way prohibit the Governor from designating students, or any other persons, to sit as advisory members on the various Boards of Regents. If the various boards approve, these advisory members would be able to participate in meetings but would have no voting privileges.

While legislation referred to in the third question is not necessary in view of the above conclusion, the mandate of Article XII, Section 13, **supra**, indicates that the Legislature may enact a law establishing the ex-officio or advisory membership mentioned above. Such legislation, if enacted, would establish formalized authorization, under which the Governor could appoint students enrolled at universities and colleges as ex-officio or advisory members of the Boards of Regents.

By: Leila Andrews

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