

## Opinion No. 75-65

December 3, 1975

**BY:** OPINION OF TONEY ANAYA, Attorney General

**TO:** Honorable James S. Pieronnet, Jr. New Mexico State Senator 4701 Commanche Road, N.E. Albuquerque, New Mexico 87110

### QUESTIONS

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1. Because a budget hearing is a duly published and authorized meeting of the local board, can legally binding decisions be reached and official business be conducted without a quorum of the board present?
2. Does the word "chief" in Section 77-6-11, NMSA, 1953 Comp., mean the individual or the office of the chief?

#### CONCLUSION

1. No.
2. See Analysis.

### OPINION

#### {\*175} ANALYSIS

1. The budget hearing in question is defined in Section 77-6-11, **supra**, which provides:

"Prior to June 20 of each year, each local school and the chief shall, at a public hearing of which notice has been published by the local school board, fix the estimated budget for the school district for the ensuing fiscal year."

With respect to rules of procedure for local school boards, Board of Education Regulation No. 74-17 states that all local boards must conduct their meetings in accordance with the open meetings law, Sections 5-6-23 through 5-6-26, NMSA, 1953 Comp. That law would require that all meetings of a quorum of the members of a local school board be meetings open to the public and held only after reasonable notice in order for any action taken at such a meeting to be valid.

There is, however, no other regulation or statute specifically requiring a quorum of the members of a local school board before action may be taken. In the absence of such regulations or statutes, generally accepted rules of parliamentary procedure would

control. **McCormick v. the Board of Education**, 58 N.M. 648, 274 P.2d 299 (1954). It is generally accepted as a parliamentary rule that a quorum be present at any meeting in order to validate any action taken or to transact any business. 67 C.J.S.; Parliamentary Law, Section 5, pp 871-2.

We conclude, therefore, that action taken on the estimated budget pursuant to Section 77-6-11, **supra**, by less than a quorum of the members of the local board would be invalid.

2. Section 77-6-11, **supra**, specifically names only the "chief" as the party to fix the budget in conjunction with the local school board. Principles of administrative law and the intent of the statute would, however, permit this authority to be delegated by the "chief."

Section 11-1-31, NMSA, 1953 Comp. defines the "chief" as the "executive head" of a division of the Department of Finance and Administration charged with the duty of administering that division. Generally, legislation delegating powers to executive departments or administrative agencies vests the entire power in the executive head of that department or agency. It is, however, obviously impossible for the executive head of a division to perform all the functions necessary for the efficient administration of the statute. See Gellhorn, **Administrative Law**, page 206, Chapter II, Second Edition, 1947. There are, therefore, certain circumstances where subdelegation of authority may be necessary. It has been held that "the authority to subdelegate need not be expressed in the statute and may be implied if there is a reasonable basis for such implication." **Warren v. Marian County** 353 P.2d 257 (Ore. 1960).

The chief of the Public School Finance Division has been given varied and extensive statutory duties. See, for example, Public School Finance Act, Section 77-6-1 to 77-6-46, NMSA, 1953 Comp.; Public School Emergency Capital Outlay Act, Sections 77-24-9 to 77-24-14, NMSA, 1953 Comp.; Public School Capital Improvements Act, Section 77-25-1 to 77-25-10, NMSA, 1953 Comp. Even with respect to Section 77-6-11, **supra**, itself, the chief is responsible for fixing the budget of eighty-eight separate school districts.

It is manifestly clear that it would be impossible for one chief to personally discharge every duty set out by law. Thus, it is our opinion that there is reasonable basis for implying the authority of the chief to delegate, under his supervision, certain powers to specifically designated assistants, and, in answer to your question, we would conclude that the word "chief" means the office of the chief.

By: Jill Z. Cooper

Assistant Attorney General