

## Opinion No. 13-1016

April 15, 1913

**BY:** FRANK W. CLANCY, Attorney General

**TO:** M. W. Browne, Secretary, Board of Regents, New Mexico Normal University, East Las Vegas, N. M.

### **NEW MEXICO NORMAL UNIVERSITY.**

Constitution intends that a change in the office of regent must be by the Governor with concurrence of the Senate.

### **OPINION**

{\*180} Your letter of the 12th inst. was received on Sunday, in which you ask me whether John D. W. Veeder is a member of your Board of Regents at the present time, and recalling to my mind that he was appointed by the Governor as successor to F. H. Pierce, whose term had already expired, in February, 1912, that appointment being submitted to the Senate at the first session of the state legislature and then rejected. You further say that no other appointment was made until the second session of the state legislature, when the name of F. D. Tittman was sent to the Senate by the Governor and was rejected.

While it had entirely escaped my memory, until I received your letter, I find that on April 27, 1912, I wrote you a letter on this same subject and after some further examination I do not find any reason to change the opinion expressed in that letter, nor do I believe that anything which has happened since has, in any way, changed the situation.

The view which I then took was that Mr. Veeder was properly appointed under Section 5 of Article XX of the Constitution, which provides for the filling of vacancies which occur while the senate is not in session in any office the incumbent of which is appointed by the Governor, by and with the advice and consent of the Senate, authorizing the Governor to "appoint some qualified person to fill the same until the next session of the senate."

Section 2 of the same article of the Constitution provides, "every officer, unless removed, shall hold his office until his successor is duly {\*181} qualified." I understand that Mr. Pierce's term of office expired February 22, 1912, and that he died two days later, whereupon the Governor appointed Mr. Veeder to fill the vacancy caused by Mr. Pierce's death, it being clear that Mr. Pierce, under the section last quoted, would hold his office until his successor should be duly qualified.

During the recess of the senate the only power to appoint to such an office is with the Governor, but he cannot exercise that power unless there is a vacancy in the office, and

the action of the senate in refusing to confirm Mr. Veeder as the successor of Mr. Pierce, or Mr. Tittman as the successor of Mr. Veeder, cannot operate to create any vacancy which the Governor can lawfully fill. It may be said that, under such circumstances as exist in this case, this holding makes it possible for the Governor to continue in office a person who may be objectionable to the senate which has a voice in making the appointment effective, and involves a disregard of the rights of the senate. If there were anything in this objection, it would be equally applicable to a case where the Governor might submit to the senate the name of a person for appointment to an office already filled by someone equally objectionable to the Governor, who is primarily the appointing power, and the senate, by refusing to confirm, could continue in office that objectionable person in disregard of the rights of the Governor. The Constitution clearly intends that such things as are here supposed might happen, and that to make a change in the incumbent of an office, there must concur action by the Governor and by the Senate.