

Opinion No. 13-1102

September 9, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Hon. William C. McDonald, Governor of New Mexico, Santa Fe, N. M.

LEGISLATURE.

Governor has no authority to accept resignation of member of legislature.

OPINION

{*276} I return herewith the letter from Mr. John Baron Burg addressed to you under date of August 22 which was received in my office yesterday by which Mr. Burg tenders his resignation as a member of the state legislature to take effect immediately. You ask me whether you should accept this resignation. I am unable to find that you have any authority or jurisdiction as to such a matter and I do not see how you can properly go beyond a mere acknowledgment of the receipt of the letter. I believe there is not a word to be found in the constitution or the statutes on the subject of the resignation of a member of the legislature except in Section 1669 of the Compiled Laws, which makes it the duty of the governor, if a vacancy should occur by death, resignation or otherwise, to issue a proclamation for a special election to fill the vacancy. This statutory provision is probably superseded by the last sentence of Section 4 of Article IV of the constitution which says, "Vacancies in either house shall be filled by an election at a time to be designated by the governor."

I am unable to see how anything which you can do would in any way add to or take from the effect of Mr. Burg's act in announcing his resignation.