

Opinion No. 14-1342

September 28, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Florencio A. Trujillo, Village Clerk, Springer, New Mexico.

VACANCIES.

Duty of board of trustees of town or village to fill vacancies caused by resignation.

OPINION

{*203} I have today received your letter of the 26th inst., enclosing the resignation of the Mayor of the Village of Springer, and you ask my opinion in regard to the appointment of a successor for the mayor. You say that some of the members of the Board of Trustees are of the opinion that a mayor ought to be appointed from outside.

I do not know whether Springer was incorporated under the statute to be found in the Compiled Laws, or under Chapter 117 of the Laws of 1909, but I believe that my answer must be the same, no matter under which act you are incorporated.

By Section 2471 of the compiled laws, it is provided that the corporate authority of any town shall be vested in a board consisting of one mayor, four other trustees and one recorder. The act of 1909 provides that the corporate authority of any village organized under that act, shall be vested in a Board of Trustees, consisting of a mayor and four other trustees and a clerk. It will be seen that under both acts, the mayor is a member of the Board of Trustees. When he resigns, there is a vacancy in the Board of Trustees, and by the eighty-seventh sub-division of Section 2402 of the Compiled Laws of 1897, it is provided that all vacancies in any board of trustees of any town or village, may be filled by appointment of the Board, the person so appointed to hold his office until the election and qualification of his successor. It is clearly the duty of the Board to fill the vacancy by appointment.

By Section 2472 of the Compiled Laws, it is provided that the mayor, or in case of his absence, any trustee, may preside at the meetings of the Board of Trustees, but this does not make such member the mayor, except for the mere purpose of presiding at the meeting. In the act of 1909, there is a similar provision to the effect that in the absence of the mayor, a member shall be elected to preside, but this does not make him mayor.

My conclusion is that there is no authority to be found in the statutes by which the Board can select one of its own members to fill the vacancy created by the resignation of the mayor, and then make another selection to fill the vacancy created by changing a member of the Board from one position therein to another. I cannot resist the conclusion that the Board is limited to nothing more than the filling of a vacancy. The vacancy

which exists is in the Board of Trustees, but it is a vacancy in the office of that member of the {204} Board of Trustees who has been elected to serve as mayor. When that vacancy is filled by the Board, the person appointed to fill the vacancy succeeds to the position of the member who has resigned, and I believe would necessarily be the mayor.

I return herewith the resignation of the mayor which you enclosed with your letter.