Opinion No. 15-1469

March 15, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Eugenio Sena, Secretary-Treasurer of New Mexico Insane Asylum, East Las Vegas, New Mexico.

As to conduct of meeting for election of officers of Insane Asylum on second Monday of March.

OPINION

*{*53}* Your letter of the 12th instant was not received here until Sunday, and I was not able to give any attention to it until today.

From your letter and the inclosed copy of minutes of the meeting of the Board of Directors on last Monday, which was the second Monday in March, it appears that at that meeting, after the transaction of a considerable amount of business, the Board, in pursuance of the requirement of law that officers should be elected on the second Monday in March, proceeded to elect E. C. de Baca to succeed himself as president, but that then one of the directors, there being only three present, "said that he would not stand for the election of officers at this time and left the room." You say that the question you desire to submit for my consideration is:

"Can a director annul the mandatory requirement of the law to elect officers on the second Monday in March each year, enforcing a parliamentary technicality of 'no quorum' after being present and participating in the meeting."

I have made some examination of authorities and have found a case decided by the supreme court of the State of Michigan which comes very close in its facts to the condition of your meeting. It appears from the opinion that the common council of the City of Detroit was required by law, at least two weeks previous to each general election, to take action as to the appointment of inspectors of election, who should also be members of the board of registration. The common council met on October 21, 1890, and was proceeding to perform this duty, when one member introduced a resolution declaring the seat of another vacant because of alleged removal from the ward which he represented. Thereupon another member made a motion to adjourn, and the "yeas" and "nays" were demanded, but without calling the roll or putting the question, the president declared the council adjourned, and left the chair. The president pro tem. refused to preside, and another member was called to the chair on motion and vote, and business was resumed. Thereupon the minority faction, there being two factions, each seeking to control the election of officers, to the number of eleven, left the council chamber for the purpose of breaking a quorum and preventing any further business. The remaining members, who were one less than a quorum, went on and transacted

business. The court violently criticized both factions, stigmatizing the action of the president in declaring the council adjourned as an outrage and impossible of excuse, as no presiding officer could arbitrarily adjourn a meeting in defiance of the majority present. The court also said that the minority, who left the council chamber at the last meeting at which the designation and selection could be made under *{*54}* the strict letter of the law, were entitled to no favor at the hands of the court, but that this would not excuse the illegal action of those who remained, as they well knew that they were without a quorum. The court held, however, that the persons who were appointed by the remaining members, who were less than a quorum, must be, from the necessity of the case, considered as de facto officers as far as they had acted up to the time of the decision, and that the council was ordered to meet on Friday evening, October 31, 1890, and proceed with the discharge of its duty. This case is styled Dingwall v. Common Council, and is reported in Vol. 82 of the Michigan Reports, beginning at page 568.

I am forced to believe that this case correctly states the law, and that after you and the other member of the board who remained, were deserted by your third member, you were no longer a quorum and could not proceed any further with business.

I do not think that the action of the man who left the board, however much it may be censurable, could be said to annul the mandatory requirement of the law to elect officers on the second Monday in March. He evades the performance of a duty, and upon proper proceeding might, perhaps, be removed from his membership on the board. But the incumbent of the office, election to which was not had, remains in office. This is distinctly provided for in the statute itself, as you will see by reference to Sections 3610 and 3611 of the Compiled Laws of 1897 read in connection with Sections 3570, 3571 and 3574 of the same Compiled Laws. Section 3574 distinctly provides that all officers shall hold their office until their successors are duly elected and qualified. Even if this were not in the statute, Section 2 of Article XX of the Constitution is applicable, that section providing that every officer, unless removed, shall hold his office until his successor has duly qualified. I am of opinion that a failure to elect on the day fixed by law does not enable the officer merely to hold until a meeting and election can be had, but until the arrival of the day upon which, next thereafter, an election can legally be held, which would be the second Monday in March of the next year. I can see no reason why there should not be applied to this case the well established rule as to general elections by the people, which is that no election can be held unless distinctly authorized by law, and then only at the time fixed by law. No citation of authorities is necessary for this position. The only time fixed by law for the election of officers of your board is the second Monday in March, and no such election can properly be held at any other time.