

Opinion No. 15-1665

October 30, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Hon. Alvan N. White, Superintendent of Public Instruction, Santa Fe, New Mexico.

As to election of boards of education in a town or village.

OPINION

{*238} I have before me your letter of the 28th instant enclosing a letter from Mr. James M. Bickley, County Superintendent of Schools for Curry County, as to which you ask my opinion, saying that this is the first case of the kind which has been brought to your attention.

Mr. Bickley says that one of his school districts has just been made a municipal district, and he desires to be advised as to how the two other members of the school board are to be selected. I am satisfied from what Mr. Asplund has told me, and from my own examination, that there is no legislation to provide for such a contingency. I understand from Mr. Bickley's letter that some place in his county must have incorporated as a town or village, covering one of his school districts where, of course, there have been three school directors elected by the people of the district. In the statutes providing for the incorporation of municipalities, while there is a clear direction as to the ordering, by the county commissioners, of an election of officers, yet those officers to be so elected appear to be only the mayor, four other trustees and a clerk. No mention is made of the board of education. It is axiomatic that no election can be held without distinct statutory authority, so that there is no way of electing the board of education in a town or village when it is first incorporated. It is distinctly provided, by Section 1 of Chapter 67 of the Laws of 1913, which re-appears as Section 4870 of the new codification, that there shall be elected, for a term of four years, in each incorporated town or village, a {*239} board of education of five members, and by the next section it is provided that two shall be elected in 1915 and three in 1917, and thereafter there shall be a regular election for members to succeed those two whose terms expire in April of each odd numbered year. Directors in school districts are elected, one in each year and for a term of three years, so that next spring the term for which one of the three directors in the recently incorporated school district was elected, will expire. It seems impossible completely and thoroughly to reconcile and make operative the varying statutes on this subject.

I am of opinion, however, as a matter of necessity that the suggestion which you have made is the only practical one, and that is, in substance, that the three existing school directors must assume to be the board of education for the new municipality, and, under Section 4880 of the Codification, which gives such a board power to fill any vacancy which may occur therein, proceed to select two other members so as to complete their number.

I return Mr. Bickley's letter for your files.