

Opinion No. 16-1750

March 6, 1916

BY: H. S. CLANCY, Assistant Attorney General

TO: Mr. William B. Prince, Espanola, New Mexico.

Power of acequia commissioners to make regulations, election of commissioners and vacancies.

OPINION

{*323} I have received your letter in which you ask my opinion as to certain points in the government of acequias, the first of which is as follows: --

"After commissioners are elected, do they possess all power to make new regulations, or do those entitled to vote in the acequia election have to be consulted or possess any power in the matter?"

The answer to this question will be found in Section 5754 of the new Codification of the statutes and as a matter of convenience to you and others interested, I will enclose herewith typewritten copies of that section in both Spanish and English. You will see from reading that section that after stating some of the general duties of the commissioners, it is declared that they "shall, immediately upon taking office, provide by-laws, rules and regulations not in conflict with the laws of the state for the government of said ditch or acequia and a printed copy thereof shall be furnished to every owner of a water right in said ditch." It seems certain that the commissioners do possess the power to make new regulations without consulting the voters who have elected them, the commissioners, to office. Any different idea must be based upon the language in the earlier part of the section with regard to making "contracts for obtaining water for irrigation purposes in connection with their ditches," as such contracts must be ratified by a majority of the owners of water rights in the ditch. I cannot find that anything else to be done by the commissioners must be voted upon by the owners of water rights.

Your second question is as follows: --

"In the election of commissioners, does each elector have one vote irrespective of his interest in the acequia, or is the voting power in proportion to his interest?"

Section 5753 of the Codification provides that only those having water rights in the acequia shall be allowed a vote, but votes may be cast by written proxy and shall be in proportion to the interest of the voter in the acequia or water, or in proportion to the number or amount of his water rights. This has been the law ever since the year 1895. It is true that in 1903 an act was passed which is printed as Chapter 32 of the Laws of that

year, in which, by Section 11, it was provided that in counties of the first class only one vote should be allowed to each voter, but at that time there were but two counties of the first class, Bernalillo and San Miguel, and this section was repealed in 1907.

Your third question is as follows:

{*324} "How is a vacancy in the office of commissioner of acequia filled?"

I cannot find that there is any statutory provision on this subject, although there is such a provision as to a vacancy in the office of mayor domo. Section 5746 of the Codification provides for the election in December of each year of three commissioners and one mayor domo, and in the last sentence of that section it is declared that in the event of a vacancy in the office of mayor domo, the commissioners have power to appoint another to hold office until his successor is elected and qualified at the regular election. In the event of one of the commissioners going out of office, the two remaining would be a quorum and could undoubtedly transact all acequia business, but I believe there is no way by which the vacancy can be filled.