

## Opinion No. 21-3209

December 8, 1921

**BY:** HARRY S. BOWMAN, Attorney General

**TO:** Mrs. Nina Otero Warren, Santa Fe, New Mexico.

### **Members State Boards Cannot Vote By Proxy.**

#### **OPINION**

{\*104} In reply to your request over the telephone for an opinion regarding the right of members of boards of state institutions and agencies to cast votes by proxy or to otherwise perform their duties through strangers or other members of the board, I wish to advise you as follows:

{\*105} You refer particularly to the right of members of the State Board of Public Welfare to perform their duties by delegating their powers and authority to other members of the board.

The Board of Public Welfare was created by Chapter 117, Laws 1921, in which Act are designated the various powers and duties of that board.

An examination of the Act clearly indicates that there is imposed in the board a wide judgment and discretion in connection with the performance of the duties imposed upon it by law.

That the delegation of judgment and discretion imposed upon public officers to other persons is contrary to law is one of the fundamental rules of jurisprudence. In Mechem on Agency, Page 369, Section 557, the rule is tersely stated as follows:

"Whenever boards and officers are vested with discretion and judgment to be exercised in behalf of the public, the board or officer must exercise it in person and cannot, unless expressly or impliedly authorized to do so, delegate it to others."

There is no provision in the Act creating the Board of Public Welfare, or any other law, expressly or impliedly authorizing the members of the Board to delegate the judgment or discretion vested in them to any other person.

It is usually presumed that the officer was selected because his personal judgment and discretion was relied upon by the appointing or electing power, and unless there is authority to delegate that power, expressly or impliedly, the officer cannot entrust the performance to another, of the duties that are imposed upon him by law.

For the reasons stated there would be no authority in any member of the State Board of Public Welfare to delegate his powers to any other member of the board, or to any other person, and therefore, no such member of said board may perform any duty by delivering his proxy to any other person, a member of the board or otherwise.