

**OPINION**  
**66-282**

March 22, 1966 (OPINION)

Mr. A. R. Nestoss

Deputy Superintendent

Public Instruction

RE: Schools - School Board - Vacancies

This is in reply to your letter of March 21, 1966, relative to the filling of vacancies on a school board. You state the school board of a school district has five members. Three of the members have resigned. The question presented is how are the three vacancies on the school board filled.

Section 15-29-06 of the North Dakota Century Code, as amended, provides:

VACANCIES ON SCHOOL BOARD - HOW FILLED. The school board shall have power to fill by appointment any vacancy which may occur on the board. An appointee shall hold his office until the next annual election and until his successor is elected and qualifies. When any such appointment is made, the clerk shall certify the same to the county superintendent of schools. In the event that the school board shall fail to fill such vacancy within sixty days after notice of a vacancy has been filed with the county superintendent of schools, the county superintendent shall call a special election for the purpose of filling the vacancy. Such election shall be conducted in the same manner as the annual school election. A vacancy shall occur on the school board by death, resignation, removal from the school district, or otherwise. Any school officer may be removed from office by a court of competent jurisdiction as provided by law, and in such event a vacancy shall exist."

The above statute would appear to indicate the remaining two members of the school board may appoint to fill a vacancy. However we must also consider the provisions of section 15-29-01 of the North Dakota of the North Dakota Century Code, as amended, which provides:

SCHOOL BOARD - QUORUM - MAJORITY VOTE ON CONTRACTS. The public school district school board shall consist of the members elected according to the provisions of Chapter 15-28. A majority of the board shall constitute a quorum, and the agreement of a majority of those members present and voting shall be necessary for the transaction of any business."

A majority of a five member board is three members and, in this instance, there are only two members remaining on the board. Under the provisions of section 15-29-01 there would not be a sufficient number of members remaining on the board to transact any business

including the filling of vacancies on the board.

We are aware that section 15-29-06 requires the county superintendent of schools to wait sixty days before calling an election to fill a vacancy on a school board. However such period of time is obviously required in order to give the school board the opportunity to fill such vacancies as required by law. In this instance, the school board will not, under any circumstances, be able to fill the vacancies during the sixty-day period. It is therefore our opinion that the county superintendent can and should immediately call an election to fill the three vacancies existing on the board. A waiting period of sixty days would, in this instance, serve no useful legal purpose. Until the board is composed of at least three members, the board cannot perform the ordinary functions required of a school district board.

It is to be noted that the North Dakota statutes make no explicit provision for filling a vacancy where less than a majority of the board members remain on the board. However we do not believe the intent of the law was to leave a school district in such a position that it could not operate. As an example, it would not be impossible for all five board members to resign or for all five positions on the board to become vacant due to death. In such an instance we believe it would be necessary to call a special election to elect a board to govern the school district.

The statute provides that the special election called by the county superintendent shall be conducted in the same manner as the annual school election. In this regard, we would note that Section 15-28-06 of the North Dakota Century Code, as amended, requires a fourteen-day notice. Such notice should be given by the county superintendent and published in the official newspaper of the county. The candidates elected should serve the unexpired terms of the three members who resigned.

HELGI JOHANNESON

Attorney General