

**OPINION
71-349**

April 20, 1971 (OPINION)

Mr. Ellis Berg

Executive Secretary

Poultry Improvement Board

RE: State - Poultry Improvement Board - Voting Members

This is in reply to your letter of April 8, 1971, requesting an official opinion of this office in regard to voting by ex officio members of a board.

Your question is stated as:

Do ex officio members on a board having voting power n that board if it is not spelled out in the law?"

You indicate your reference is to the Poultry Improvement Board law and the changes which will come about July 1, 1971.

We assume that your specific reference is to House Bill No. 1089 passed and approved at the last legislative session.

Section 4-13-04 of the 1969 Supplement to the North Dakota Century Code provided:

IMPROVEMENT BOARD - HOW CONSTITUTED - POWERS OF EX OFFICIO MEMBERS. The North Dakota poultry improvement board shall consist of the chairman of the poultry department of the North Dakota agricultural college, the commissioner of agriculture, and the executive officer of the livestock sanitary board, ex officio, and six members to be appointed by the governor in the manner hereinafter set forth. The ex officio members shall have no voting power, but shall attend and participate in the meetings of the board in an advisory capacity."

Section 2 of said House Bill No. 1089 will change this provision effective July 1, 1971, to provide:

3-13-04. IMPROVEMENT BOARD - HOW CONSTITUTED - TERMS. The North Dakota poultry improvement board shall consist of the commissioner of agriculture, who shall serve as chairman, the executive officer of the livestock sanitary board, and the chairman of the animal science department of North Dakota state university, all ex officio members, and three members to be appointed by the commissioner of agriculture in the manner set forth in section 4-13-05."

The term "ex officio" is defined by Webster's New Twentieth Century Dictionary Unabridged, Second Edition as:

By reason of one's office; as, the mayor is, ex officio

president of the board of aldermen."

Noting the new act specifically deletes the provision as to ex officio officers having no voting power, and nothing further the other changes in the act such as deletion of the provision that poultry fund shall constitute sole source of revenue for the board, general fund appropriation to the board, provision for deposit of fees in state treasurer, control, etc., otherwise given to officers primarily on general fund appropriations, we would assume that the deletion of the provision as to such officers having no voting power was deliberate and intended to have the effect of giving these officers voting power. We do note the retention of the provision in the revised section 4-13-06 to the effect that "a majority of the appointed members of the board shall constitute a quorum for the transaction of business" and that the revised section 4-13-07 retains provision that ex officio members shall receive no special compensation other than travel expenses; however, this would appear to us to merely indicate recognition of the vital interest the appointed members are expected to have in the business of the board, not an intention to limit voting power to these members.

On such basis, it is our opinion that the ex officio members of the poultry improvement board as of July 1, 1971, the effective date of House Bill No. 1089, will be entitled to vote at poultry improvement board meetings.

HELGI JOHANNESON

Attorney General