

Opinion No. 53-5633

January 13, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable Beatrice B. Roach Secretary of State State of New Mexico Santa Fe, New Mexico

{*16} You have addressed a letter to this office inquiring whether you, as presiding officer of the House of Representatives, pursuant to Section 8, Article IV of the Constitution of the State of New Mexico, can vote to break a tie in the voting for Speaker of the House of Representatives to be designated, whether or not you, as the presiding officer, can determine the order of business to be followed until the Speaker is elected together with your power to rule motions out of order during your period of presiding and a third question was presented concerning the procedure to be followed in the event two persons presented themselves for the same seat in the House of Representatives and contest develops. We will answer these questions in the order in which they are set out above.

1. On the question concerning whether or not you have a right to vote in the event the vote develops equally, that is to say a tie vote, for the Speaker of the House of Representatives. The Constitution, in Article IV, Section 11, authorizes each House to determine its rules of procedure. There is no specific power granted the Secretary of State, while presiding over the House of Representatives, to vote or otherwise act other than as presiding officer until the election of the Speaker of the House. It is a component part of the election of the Speaker to determine the rules under which an election shall be had. These rules would be a necessary order of business and as presiding officer you are empowered to accept motions concerning the rules.
2. In regard to the question of your power to determine the order of business to be followed by the House of Representatives while you are presiding officer, it is the opinion of this office that you have the full power given in the term "presiding officer". As presiding officer and until the members elect a speaker, you may preside in the same fashion that any parliamentary presiding officer can preside. Part of the power incident to a presiding officer is the power to rule on the order of business and upon the question of whether or not motions are in order. Your duties, however, are confined to the election of a Speaker of the House and only such motions are incident to the election of such speaker would be in order. This will include motions to adopt certain rules, nominations for speaker, motions for a recess, etc.

The Legislature, at the time it is called initially, is without any prescribed rules. The law does not set out any rules by which the Legislature must function until each house adopts its own set of rules. Either House was the full power to prescribe the rules which they desire. The House can give you the power to vote to break a tie if they choose to adopt such a rule. The usual parliamentary rules and parliamentary authorities provide

that the presiding officer, chairman or president has authority to cast a vote to break a tie, regardless of whether or not he is a member of the assembly. Robert's Rules of Order, Article X, Section 58, p. 238.

"The usual method provided to end a deadlock or tie vote in the proceedings of a legislative {*17} body is to place in the hands of some designated person or officer, who may or may not be a member thereof, the power to cast the deciding vote." 49 Am. Jur. 249.

The last Legislature submitted their own specified rules and adopted Robert's Rules of Order where their rules were not applicable.

Therefore it is our opinion that the Secretary of State, as presiding officer, has no authority to cast a vote to break a tie unless some rules are provided therefor. The standard rules of parliamentary procedure, including Robert's Rules of Order, and the rules of the last Legislature of the State of New Mexico, provide that the presiding officer can vote to break a tie and it is our opinion that the House of Representatives has the power to adopt such a rule and if such a rule is adopted, the Secretary of State shall have the full power to vote to break a deadlock.

It is the opinion of this office that you, as presiding officer, have the power to prescribe the order of business and power to rule on whether or not a motion is in order. However, said rule is subject to a possible point of order to be voted on by the members of the assembly.

3. In regard to the question of contested applicants for the same, it is the opinion of this office that you have only the authority to administer an oath to such persons as have been issued valid election certificates. In the event two persons present themselves for the same seat, each with an election certificate, the person holding election certificate bearing the later date shall be determined by you to be the valid applicant for the office. You shall administer the oath to only such person. You have the authority to require the members to present election certificates before they can be sworn. However, as a practical matter, we suggest that you require either an election certificate or an affidavit attesting that a valid election certificate has been issued to them and that such certificate has not been revoked. We find no authority to give you the power to ask any person with a valid election certificate to step aside and to withhold administering the oath to them.

It is suggested by this office that in the event a person contests the administration of the oath to any member presenting a valid election certificate or affidavit, that said contestant be informed that you have no authority not to recognize the election certificate and that he may present his contest on the floor of the Legislature after it is duly organized.

It is the opinion of this office that you have the power to require an election certificate, or in lieu thereof an affidavit to the effect that affiant has been issued a valid election

certificate, which election certificate has not been revoked, and that upon presentment of a valid election certificate, or the affidavit in lieu thereof, you must administer oath to that person and only such person.

We sincerely hope that this answers your inquiry.