

Opinion No. 56-6515

September 6, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. M. E. Noble, City Attorney, City of Las Vegas, Las Vegas, New Mexico

Your letter of August 17, 1956, is here partially quoted in order to state the facts:

"One of the members of the City Council of the City of Las Vegas has resigned and moved from Las Vegas. A regular meeting of the Council is scheduled to be held Monday, August 20, at 8:00 o'clock P.M. The Mayor advises that a quorum of the seven remaining members will not be in town at that time. He asks the question as to whether he can appoint a member to fill the vacancy and thus have a quorum for the meeting without confirmation by a majority of the Council."

Section 14-17-5, N.M.S.A., 1953, appears to cover the situation.

"14-17-5. Vacancy in council or board -- Appointment by mayor -- Conditions. -- All vacancies occurring by death, disability or resignation of any city council, or board of aldermen, or board of trustees of any incorporated city, town, or village, shall be filled by appointment by the mayor of such city, town or village, by and with the advice and consent of the city council or board of aldermen or board of trustees, as the case may be, the person so appointed to hold his office until the election and qualification of his successor at the next succeeding municipal election."

Your City Council has a vacancy under the statute, created by resignation. The Mayor may make the appointment to fill the vacancy de facto, and the de facto appointment continues until disapproval by the City Council, or by the election and qualification of a successor "at the next succeeding municipal election."

By Howard M. Rosenthal

Assistant Attorney General