

## **Opinion No. 60-98**

May 31, 1960

**BY:** OPINION of HILTON A. DICKSON, JR., Attorney General

**TO:** Hon. Tibo J. Chavez State Senator Valencia County Belen, New Mexico

### **QUESTION**

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1. Is the Mayor of a town entitled to vote on the question of confirming one of his own appointments when the other trustees have registered a tie vote?
2. In the event the Mayor has no right to break the tie vote of the trustees and there is a deadlock which would prevent confirmation of city employees, what is the legal status of such employees until such time as they are confirmed by the trustees?
3. May the Mayor of a town vote as a trustee on matters generally before the trustees or is he merely a presiding officer?

#### **CONCLUSIONS**

1. Yes.
2. No need to be answered since the answer to Question No. 1 is yes.
3. Yes.

### **OPINION**

#### **{\*465} ANALYSIS**

Under Section 14-16-3, N.M.S.A., 1953 Compilation, the corporate authority of a town is vested in a board consisting of one mayor, four other trustees and one recorder. Under Section 14-17-2 the Mayor of any incorporated city, {\*466} town or village, as the chief executive officer thereof, and subject to approval of a majority of the city council or board of aldermen or board of trustees, as the case may be, may appoint all officers and employees except those required by law to be elected. Further, he must submit such appointments for the approval of a majority of such council, board of aldermen or board of trustees. Such approval must be obtained before any officer or employee is a duly appointed and qualified officer or employee of a city, town or village, as the case may be.

It can be seen from the above cited statute that the Mayor acting in his executive capacity has the power of appointment of all town officers and employees subject to the approval of the board of trustees. However, it can further be seen that the Mayor, in addition to being the chief executive officer of the town is also a trustee since, under Section 14-16-3, the corporate authority of the town is vested in a board consisting of a **mayor and four other trustees**.

In our opinion, since the mayor is one of the trustees of the town he should be entitled to vote in connection with the approval of his own appointments of city officers and employees.

Our position is supported by case law from other states. See McQuillin, Municipal Corporations, Section 13.25 wherein the author states that where the presiding officer or mayor is a member of a municipal council or other governing body, unless expressly forbidden by law, he may vote on all the questions before such body as a constitutional member thereof. In support of this rule, Mr. McQuillin cites cases from Colorado, Illinois, Kansas, Kentucky, Michigan, New York, North Carolina and Utah.

There is no reported New Mexico case law on this question however, the District Court of the First Judicial District, sitting within and for Santa Fe County in the case of **Romero v. Ortiz, et al.**, No. 24019, rendered a decision on April 13, 1951 which we feel is pertinent to the question here presented. In this case the Court concluded that the Mayor of the City of Santa Fe could cast the deciding vote of the aldermen of the city on the question of an appointment made by the member to the office of city marshal. The decision was based on the language of Section 14-1405, N.M.S.A., 1941 Compilation (Now compiled as Section 14-15-5, N.M.S.A., 1953 Compilation) which states that the mayor is the presiding officer of a city and shall vote where there is a tie vote but not otherwise. True, Section 14-17-2 does not contain the same language in connection with the powers of a mayor of a town. However, in our opinion, based upon the authority cited by Mr. McQuillin where under Section 14-16-3 the mayor is considered a trustee of the town, he may vote to confirm his own appointments. This is because there is no provision of law expressly prohibiting such a vote.

Your question Number 2 need not be answered since we have concluded in answer to question Number 1 that the mayor may vote to confirm his own appointments.

We answer question Number 3 in the affirmative. The above cited section from Mr. McQuillin's text indicates that a mayor may not only vote when there is a tie vote among the other members of a municipally governed body but that he may vote on municipal matters generally when, as in New Mexico, the mayor is a member of the municipal governing body. Therefore, we conclude that a mayor of a town is not limited in his vote to questions upon which the other members of the board of trustees have deadlocked in a tie.

By: Philip R. Ashby

Assistant Attorney General