

Opinion No. 62-68

June 6, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Thomas A Donnelly, Assistant Attorney General

TO: Filo M. Sedillo, Assistant District Attorney, Second Judicial District, Belen, New Mexico

QUESTION

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May a person who has been temporarily appointed by the Mayor of a Town, and whose name has been submitted to the Town Council for confirmation and then rejected by the town council, be again appointed by the Mayor for the same position temporarily, or must the Mayor submit a new name for such position?

CONCLUSION

See analysis.

OPINION

ANALYSIS

The general statutory authority authorizing the Mayor of any incorporated town to appoint and to hire employees on behalf of the Town is specified in Section 14-17-2, N.M.S.A., 1953 Compilation, as follows:

"The mayor of any incorporated city, town or village shall be the chief executive officer thereof. He shall, subject to approval of a majority of the city council, or board of aldermen, or board of trustees, as the case may be, appoint all officers except those who may be required by law to be elected by the voters of the city, town or village. The mayor shall also designate, subject to the approval of a majority of the city council, or board of aldermen, or board of trustees, as the case may be, the employees of such city, town or village to perform any service which may be authorized by the city council or board of aldermen, or board of trustees, and such approval must first have been had before any officer, or employee appointed by the mayor shall be considered a duly appointed and qualified officer, or employee of any city, town or village; Provided, however, that the mayor of any such city, town or village shall have power to employ on behalf of the city such temporary, extra or emergency police officers or other employees as may be required in the proper administration of the municipal affairs, who shall serve only until the next regular meeting of the council at which a quorum is present, and such employee so appointed by the mayor will be entitled to receive the usual, ordinary and

reasonable compensation for services rendered such municipality under such appointment or appointments, but such **temporary employment shall cease, and such appointee or employee shall not be reappointed or reemployed unless his name is submitted to such meeting for confirmation and such confirmation granted.** In case of the mayor's death, disability or resignation, the city council, board of aldermen, or board of trustees, as the case may be, shall elect a mayor by a majority vote of such council, or board, to fill the vacancy for the remainder of the vacant term, and may elect any qualified elector to act as mayor, who shall serve until his successor is regularly elected and qualified." (Emphasis added)

As set out in the statute quoted above, such legislation contemplates that in situations involving employment of other than "temporary, extra, or emergency" employees, such persons shall be first designated for employment by the Mayor and prior approval obtained from the Town Board of Trustees before the employee appointed by the Mayor may be considered a duly appointed and qualified employee.

Our statute, Section 14-17-2, supra, however, makes exception to such general rule necessitating prior Board approval, in instances where it is necessary to hire temporary, extra, or emergency personnel. In such cases the Mayor may temporarily appoint and employ such personnel, but the names of such employees must be submitted to the next regular meeting of the Town Board of Trustees, at which a quorum is present for the Board's approval, and such employee must be approved by the Board to continue in that same capacity.

In our prior Attorney General's Opinion No. 5375, dated June 20, 1951, construing the provisions of Section 14-17-2, N.M.S.A., 1953 Compilation, it was pointed out that under such statute, the employment of temporary personnel cannot be extended beyond the time of the next town board meeting at which a quorum is present, and that under the statute the employment must be confirmed or rejected.

It is generally recognized that where the employment of a municipal employee is by statute subject to board approval, that such approval by the board is a prerequisite to the valid employment of city personnel. **City of Princeton v. Woodruff**, (1952) 104 N.E. 2d 748, 230 Ind. 536. As pointed out in *McQuillan on Municipal Corporations*, Vol. 3, Section 12.87, at pages 332-333 thereof, the general rule is stated:

"Laws and municipal charters frequently require the appointment to be approved or confirmed by some officer or body, or board, as the council or legislative body of the municipal corporation. This provision is usually held mandatory; hence, without approval or confirmation as prescribed, the appointee is not authorized to enter upon the duties of the office or employment."

Section 14-17-2, N.M.S.A., 1953 Compilation, makes provision for emergency, extra or temporary personnel, and invests the Mayor with discretion in making such appointment. It is generally contemplated that in such cases, however, that this type of

employment will be of short duration. In 62 C.J.S., "Municipal Corporations," Section 473, at page 911, it is stated:

"Provisional or emergency appointments are made to enable a municipality to cope with emergency situations, often of short duration, requiring the immediate employment of persons by the municipality . . ."

Under the above authorities it is evident that the authorization contained in Section 14-17-2, N.M.S.A., 1953 Compilation, contemplates that situations may arise whereby temporary or emergency employees are necessary and time may not permit securing prior approval for such employment from the Town Board. In such cases, the Mayor is given discretionary powers to employ temporary, extra, or emergency personnel.

As we view this statutory provision, quoted above, however, while the selection and appointment of such personnel is discretionary in the first instance, nevertheless the Mayor is precluded from again temporarily appointing or employing individuals to the same position after the holding of the next regular meeting of the Town Board, at which a quorum is present, and where there has been a failure or refusal of the Town Board to confirm such employee. In the event such employee's name is not submitted to the next regular Town Board, where there is a quorum present, or where the appointment fails to obtain approval from the Board, the employee may not thereafter be continued in the same position or reappointed by the Mayor for such temporary, extra or emergency employment without his name first being submitted to the Town Board and approved by them.