

## Opinion No. 65-183

September 20, 1965

**BY:** OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

**TO:** Elmer L. Skinner, State Representative, P.O. Box 1330, Carlsbad, New Mexico

### QUESTION

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Does a mayor in a mayorcouncil municipality have the power to veto and thereby render ineffective a motion, adopted by five of the eight councilmen, to terminate the services of a city employee?

#### CONCLUSION

No, but see analysis.

### OPINION

#### {\*301} ANALYSIS

The answer to your question is governed by the provision of the Municipal Code which became effective on July 1, 1965.

Section 14-10-6 of the Code provides as follows in Paragraph D:

"Subject to the limitation of a merit system ordinance adopted as authorized in section 14-12-4, New Mexico Statutes Annotated, 1953 Compilation:

- (1) **the governing body may discharge an appointed official or employee by a majority of all the members of the governing body;** or
- (2) the mayor may discharge an appointed official or employee upon the approval of a majority of all the members of the governing body; or
- (3) The mayor may suspend an appointed official or employee until the next regular meeting of the governing body at which time the suspension shall be approved or disapproved by a majority of all the members of the governing body. If the suspension of the appointed official or employee is disapproved by the governing body, the suspended appointed official or employee shall be paid the compensation he was entitled to receive during the time of his suspension." (Emphasis added)

Prior to adoption of the Municipal Code the mayor in a mayorcouncil municipality had a power of veto over resolutions, ordinances or other legislative action of the council. And it took a two-thirds vote of the council members present and voting to override such a veto. Sections 14-25-5 and 14-25-6, N.M.S.A., 1953 Compilation. However, these sections were repealed by the Municipal Code, and such repealer was not inadvertent. Section 14-16-3 of the new Code is the comparable present provision. And it does not give the mayor veto power over resolutions or ordinances, much less over motions.

Section 14-10-3 of the new Code provides that the mayor shall vote only when there is a tie vote. However, Section 14-11-2 of the new Code does provide that when a simple majority vote is all that is needed (which is the case when the termination of a municipal officer or employee is at issue) the mayor is counted in determining the actual number of votes needed. Thus in the present situation the motion needed five votes to carry and, as certified by the city clerk, that is the number of affirmative votes cast.

Unless the municipality has adopted a merit system providing otherwise, an officer or employee may be discharged "by a majority of all the members of the governing body." Section 14-10-6, supra, Paragraph E of the same Section {302} provides that upon such discharge the official or employee is entitled, upon request, to a list of the reasons for his discharge and is entitled to be paid for accrued vacation time.