

Opinion No. 68-97

September 24, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mrs. Helen B. Aldrich Judge, Village of Chama Chama New Mexico and Mr. Luis L. Fernandez Chief, Local Government Division Department of Finance and Administration Santa Fe, New Mexico

QUESTION

FACTS

The Village of Chama is governed by a Mayor and Four Trustees. Village of Chama Ordinance No. 1962-11 provides that, "At all meetings of the Village Board of Trustees, three trustees shall constitute a quorum to do business."

QUESTION

At the meetings of the Village of Chama Board of Trustees, does the presence of the Mayor and two trustees constitute a quorum?

CONCLUSION

Yes.

OPINION

{*152} ANALYSIS

Section 14-11-2 (B), N.M.S.A., 1953 Compilation (P.S.), provides:

"A **majority of the members of the governing body is a quorum** for the purpose of transacting business." (Emphasis added.)

Section 14-11-2 (D), N.M.S.A., 1953 Compilation (P.S.), defines "governing body":

"The **governing body** of a municipality having a mayorcouncil form of government **is the council or board of trustees whose members are the mayor and . . . councilmen or trustees.**" (Emphasis added).

The only reasonable interpretation of these two statutory provisions is that the mayor is a member of the board of trustees and must be counted when determining a quorum. Inasmuch as a municipal ordinance which contradicts a state statute is invalid, **State v. Aztec Ditch Co.**, 25 N.M. 590, 185 Pac. 549 (1919), it would be fruitless to interpret

Village of Chama Ordinance No. 1962-11 in a manner which would contradict the statute.

It should be noted that sections 14-11-2 (B) and 14-11-2 (D), which were adopted in 1965, affect the ordinance in question in a manner entirely consistent with the statutes which were in effect at the time the ordinance was passed. The former statute, Section 14-16-3, N.M.S.A., 1953 Compilation, was interpreted by Opinion of the Attorney General No. 60-99, dated May 31, 1960, as establishing the mayor of a town as being one of the trustees.

It is true that Section 14-11-3 (5), N.M.S.A., 1953 Compilation, provides that the governing body shall determine the rules of its own proceedings, but that general provision cannot override the specific mandate of Sections 14-11-2 (B) and 14-11-2 (D). Specific statutes are considered as exceptions or qualifications on general statutes treating the same subject matter. **Lopez v. Barreras**, 77 N.M. 52, 419 P. 2d 251 (1966) and **Marinez v. Cox**, 75 N.M. 417, 405 P.2d 659 (1965).

By: Larry N. Smith

Assistant Attorney General