

Opinion No. 69-147

December 19, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Jeff Bingaman, Assistant Attorney General

TO: Mr. Philip T. Manly, Attorney, New Mexico Legislative Council Service, Legislative Executive Building, Santa Fe, New Mexico 87501

QUESTIONS

If, during the odd-year session of the New Mexico Legislature, the house in which a bill originated voted to override the veto but the other house either failed to override or failed to take any action before adjournment, must the house of origin again vote to override at the next even-year session or does the vetoed bill become law upon an override vote by the second house?

CONCLUSION

See Analysis.

OPINION

{*235} ANALYSIS

Implicit in this question there appears to be an assumption that the legislature is required by the New Mexico Constitution or some other body of law to follow one or the other of the procedures under consideration. If such an assumption does exist, we cannot accept it. Based on the following analysis, we conclude that the decision concerning which procedure to follow is one for the legislature to make as part of its rule-making function.

Article IV, Section 5 of the New Mexico Constitution states:

"A. Each regular session of the legislature shall begin annually at 12:00 noon on the third Tuesday of January. Every regular session of the legislature convening during an odd-numbered year shall remain in session not to exceed sixty [60] days, and every regular session of the legislature convening during an even-numbered year shall remain in session not to exceed thirty [30] days. No special session of the legislature shall exceed thirty [30] days.

B. Every regular session of the legislature convening during an even-numbered year shall consider only the following:

(1) budgets, appropriations and revenue bills;

(2) bills drawn pursuant to special messages of the governor; and

(3) bills of the last previous regular session vetoed by the governor."

As is pointed out in your opinion request, Attorney General Opinion No. 65-140 interprets Article IV, Section 5 B to mean that bills vetoed by the governor during an odd-year session and returned to the house of origin during that session, may nevertheless be considered for an override by the next even-year session of the legislature. We reaffirm the conclusion reached in the previous opinion, but find nothing in Article IV, Section 5 of the New Mexico Constitution bearing on the question presented here. Likewise, we find nothing in Article IV, Section 22 of any other portion of the New Mexico Constitution which helps resolve this question.

Article IV, Section 11 of the New Mexico Constitution states in part, "Each house may determine the rules of its procedure, . . ." Even without an explicit constitutional provision to this effect, the inherent rule-making power of a legislature is universally recognized. **French v. Senate**, (1905), 146 Cd. 604, 80 Pac. 1031; **Witherspoon v. State**, (1925), 138 Miss. 310, 103 So. 134. Although no authority has been found on the question of whether it is within the rule-making power of the legislature to determine the issue here, there is considerable authority upholding the power of the legislature to determine similar issues.

A legislature has authority to promulgate rules governing the procedure of reconsidering a vote to override a chief executive's veto. **Kay Jewelry Co. v. Board**, (1940), 305 Mass. 581, 27 N.E. 2d 1; **State v. Lewis**, (1936), 181 S.C. 10, 186 S.E. 625. The fact that the United States House of Representatives refuses to allow a motion to reconsider a vote on the reconsideration of a bill returned with the objections of the President, is additional authority for this rule-making discretion being vested in the legislature. **Cannon's Precedents**, Vol. V, Section 5644. See {*236} also Section 755 (4) of Mason's **Manual of Legislative Procedure**.

A legislature also has power, absent constitutional provisions governing the subject, to decide the procedure to be used in considering a vetoed bill not acted upon before adjournment of the first session. See **Cannon's Precedents**, Vol. IV, Section 3522, where the United States House of Representatives acted upon a vetoed bill on the first day of the second session on December 4, 1854, when the vetoed bill had been returned by the President too late to be considered by the previous session. As pointed out above, Article IV, Section 5 of the New Mexico Constitution has been interpreted in Attorney General Opinion No. 65-140 to specifically provide for this, but absent constitutional provisions on this subject, the above authority supports the view that this would be within the rule-making power of the legislature.

No legal restrictions on the New Mexico Legislature's procedure in this regard can be found. The New Mexico Constitution grants to the legislature in Article IV, Section 11, the power to "determine the rules of its procedure." This power has been interpreted in other jurisdictions as embracing determinations very similar to the one involved here.

Therefore, we conclude that the legislature has authority to determine whether the house of origin must again vote to override at the next even-year session, when during the odd-year session, the house of origin voted to override the veto but the other house either failed to override or failed to take any action before adjournment.