

## **Opinion No. 69-148**

December 23, 1969

**BY:** OPINION OF JAMES A. MALONEY, Attorney General James C. Compton, Jr.  
Assistant Attorney General

**TO:** Mr. Eliu E. Romero, City Attorney, P.O. Box 932, Taos, New Mexico 87571

### **QUESTION**

#### QUESTIONS

1. What is the "governing body" of a municipality having a mayor-council form of government?
2. Where the municipal code provides that a "majority" of the governing body shall vote in favor of an issue, what is a "majority"?

#### CONCLUSIONS

1. The governing body is composed of the members of the council or board of trustees.
2. See analysis.

### **OPINION**

#### {\*236} ANALYSIS

1. As used in the Municipal Code, the term "governing body" is defined in Section 14-1-2(F), N.M.S.A., 1953 Comp. (1969 P.S.) as:

"Governing body' means the city council or city commission of a city, the board of trustees of a town or village, the council of incorporated counties and the board of county commissioners of H class counties."

The term "governing body" is further defined in Section 14-11-2(D), N.M.S.A., 1953 Comp., as:

"The governing body of a municipality {\*237} having a mayorcouncil form of government is the council or board of trustees whose members are the mayor and not less than four [4] nor more than ten [10] councilmen or trustees."

From these statutes it is apparent that the governing body of a municipality having a mayor-council form of government is either the council or board of trustees. The membership of such a governing body, as defined in Section 14-11-2(D), supra, is

composed of the mayor and at least four but not more than ten councilmen or trustees. In order to transact business a majority of members of the governing body constitutes a quorum. Section 14-11-2(B), N.M.S.A., 1953 Compilation.

To understand the functioning of the governing body, it is necessary to analyze the status of the mayor. The mayor in a mayor-council form of government is considered a member of the governing body and must be counted in determining whether a quorum is present to transact business. Opinion of the Attorney General, No. 68-97, issued September 24, 1968. The mayor is the "presiding officer" of the governing body. Section 14-10-3, N.M.S.A., 1953 Compilation. On matters coming before the governing body, the mayor may vote only when there is a tie vote of the councilmen present at the meeting. Section 14-10-3, supra. The possibility that his voting might be further limited by a local ordinance or by rules of the governing body itself is contemplated in Section 14-11-2 (E), N.M.S.A., 1953 Compilation.

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

"Unless otherwise provided by law, a question before the governing body shall be decided by a majority vote of the members present."

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

"In those municipalities where a mayor has no vote except in case of a tie vote and there is a requirement that a certain fraction or percentage of the members of the entire governing body or of all the members of the governing body or of the entire membership of the governing body or other similar language, other than the requirement of a simple majority, vote for the measure, the mayor shall not be counted in determining the actual number of votes needed."

The vote of a mayor is to be counted when only a simple majority vote is needed. Opinion of the Attorney General No. 65-183, issued September 20, 1965. On matters coming before the governing body, such as the mayor's appointment of officials and employees as provided in Section 14-10-6 (A) (1), N.M.S.A., 1953 Compilation, where the mayor has no vote except in case of a tie vote of the councilmen and where the councilmen's vote is a tie, the mayor's vote is counted in determining the simple majority required in favor of the issue.

A "majority" of the governing body, therefore, is one more than half of the councilmen present at the vote. As stated above, a mayor is counted for purposes of a quorum, but his vote is counted only if there is a tie vote of the councilmen present at a meeting. For example, if there are four councilmen present at least three would be required to constitute a "majority". If only two of the four councilmen present voted in favor of the issue, then the mayor's vote would be counted and included for purposes of constituting a "majority".