

Opinion No. 69-26

April 10, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Oliver H Miles, Assistant Attorney General

TO: Mr. Clay Buchanan, Director, New Mexico Legislative Council, 334 State Capitol, Santa Fe, New Mexico 87501

QUESTIONS

FACTS

Section 2-3-1, N.M.S.A., (1967 P.S.) creates the New Mexico Legislative Council composed of thirteen members.

"The president pro tempore of the senate and the speaker of the house shall be members . . . Six members shall be appointed from the house and five members shall be appointed from the senate . . . The appointed members of the council shall be appointed from each house so as to give the political parties in each house the same proportionate representation on the council as prevails in that house providing that in the computation, major fractions shall be counted as whole numbers . . ."

QUESTIONS

Does the above statute require that total membership from each house be proportioned or does it require only that the appointed members be appointed proportionately to the party representation in each house?

CONCLUSION

See Analysis.

OPINION

{*40} ANALYSIS

From your request it appears that either of the above methods of computations will, at this time, produce the same resulting party membership in the senate. In the house, however, the two computations will presently produce differing party memberships. Using your figures which show that the republicans presently constitute 37.1428% of the house membership, they would be entitled to 2.59 (or three) appointed members to the council if the speaker were included in the computation. If the speaker were excluded from it, they would be entitled to 2.2 (or only two) appointed members to the council.

The language of Section 2-3-1, supra, is:

"The appointed members of the council shall be appointed from each house so as to give the **same proportionate representation on the council as prevails in that house.**" (Emphasis added.)

It is our opinion that the above language requires that total council membership from each house be used in computing proportionate party membership. The speaker of the house and the president pro tempore of the senate {**41*} must be included in computing party membership from their respective houses. Only if this were done would the council have the "same proportionate representation on the council as prevails in the house." To do otherwise would contravene the spirit of the statute by giving the majority party in each house an additional member to the council.