Opinion No. 70-21

February 16, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: The Honorable E. Lee Francis Lieutenant Governor of the State of New Mexico Legislative-Executive Building Santa Fe, New Mexico 87501

QUESTIONS

FACTS

On Thursday, February 12, 1970, the New Mexico Senate voted on a motion to override the Governor's veto of Senate Bill 115, enacted during the First Session Legislative Day, received a majority vote but failed to achieve Legislature Day, received a majority vote but failed to achieve the necessary two-thirds majority.

The Senate was in session on Friday, February 13, 1970, during which time no action was taken to reconsider the above vote to override.

On Saturday, February 14, 1970, while the Senate was still in the 24th Legislative Day, a motion was offered to reconsider the vote to override. The Senator offering the motion had voted with the majority on the original effort to override.

QUESTIONS

Under the Rules of the Senate of the State of New Mexico:

A. Was the motion to reconsider the original vote to override timely made; and

B. Was the Senator offering the motion to reconsider entitled to do so?

CONCLUSIONS

A. No.

B. Yes, but the untimely nature of the motion itself suggests that it should be ruled "not in order."

OPINION

*{*34}* **ANALYSIS**

It must be recognized at the outset that the Senate of the State of New Mexico is the ultimate judge of its own rules, Constitution of New Mexico, Article IV, Section 11. The

Presiding officer is empowered to interpret and enforce those rules subject to the Senate's approval, RULES OF THE SENATE, Sections 3 and 65. This office therefore offers its Opinion on the interpretation of certain of the Senate's rules without suggesting that our interpretation is superior to a determination of these Rules by the Senate itself.

The reconsideration of a motion previously voted on is permitted under certain circumstances. RULES OF THE SENATE, Section 55 as amended, provides:

"55. Except as provided in Rule 56, when a motion has once been made and carried, in the negative or affirmative, it shall be in order for any member of the majority to move for the reconsideration thereof on the same or the next succeeding calendar day during which the Senate shall be in session, and such motion shall take precedence over all other questions, except a motion to adjourn or take a recess, except in a bill recalled from the Governor or House of Representatives, for amendment, as to which a motion may be made when it is received on such recall. No vote shall be reconsidered upon either of the following motions: To adjourn: to lay on the table."

By the terms of this rule, "calendar" days are employed in determining the period during which reconsideration may be moved. Legislative days are not the measuring unit, and thus the power lying with the Legislature to "stop the clock" is not available for extending the time during which reconsideration may be proposed. C.f. **Earnest v. Sargent,** 20 N.M. 427, 150 P. 1808 (1915).

As a well-settled matter of law, the term "calendar day" has reference to the period of time between two successive midnights. **In re Niel,** 55 Misc. 317, 106 N.Y.S. 479 (1907); **Booker v. Chief Engineer,** 324 Mass. 264, 85 N.E. 2d 766 (1949). Thus, in the case of a motion voted upon February 12, 1970, a motion to reconsider would be timely only if made on the day of the original vote, February 12, or the "next succeeding calendar day," February 13. Any motion for reconsideration made after 12:01 A.M., February 14, 1970, would be untimely.

By further provision of RULES OF THE SENATE, Section 55, a timely motion for reconsideration is proper when offered by a Senator voting with the majority on the original question. The rule does not require that the Senator be part of any extraordinary majority, or that he belong to what might be termed the "prevailing side." The rule requires only that the Senator offering the motion have voted with the **majority** on the original question, and the term "majority" has been universally understood to mean simply the larger of two vote totals. **Gallaher v. City of Fargo,** 64 N.W.2d 444 (N.D. 1954); **Babyak v. Alten,** 106 Ohio App. 191, 154 N.E.2d 14 (1958); **Himmel v. Leimkuehler,** 329 S.W.2d 264 (Mo. App. 1959). The Senator offering the motion to reconsider, having voted with the greater number of his colleagues on the original question, would thus have been entitled to move reconsideration within the allowable time for such motion as explained above.

By: Richard J. Smith

Assistant Attorney General