

Opinion No. 70-48

May 6, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: Mayor R. J. Kloeppel Post Office Box 187 Bernalillo, N.M. 87004

QUESTIONS

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1. In reference to Section 14-11-2, N.M.S.A., 1953 Compilation, if only two council members and the mayor are present for a meeting, is the mayor counted as the third member to determine a quorum?
2. May the mayor second a motion if the conduct and the proceedings of the meeting are carried out in accordance with the parliamentary rules contained in Robert's Rules of Order?
3. May the mayor vote on a question, if the vote is tied one to one?
4. May the city council hire an individual without the recommendation of the mayor?

CONCLUSIONS

1. Yes.
2. Yes.
3. Yes.
4. No.

OPINION

{*80} ANALYSIS

1. Section 14-11-2 (D), N.M.S.A., 1953 Compilation, states:

"The governing body of a municipality having a mayor-council 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." (Emphasis added.)

Section 14-11-2 (B), supra states:

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

Since the mayor and councilmen are "members," and since a minimum of four councilmen and one mayor are necessary to constitute the governing body, the majority of members necessary to constitute a quorum is at least three [3] in a municipality that calls for the minimum number.

Thus depending on size of the council, if only two councilmen and the mayor are present for a meeting, a quorum may be constituted. See Opinion of the Attorney General No. 68-97, dated September 24, 1968.

2. The purpose of seconding a motion is to advise the chairman that more than one person is favoring a motion, and thus conserve time, by not acting on isolated motions that only one person favors. Robert's Rules of Order Revised, Section 5, p. 36, 75th Edition.

There is no requirement that Robert's Rules of Order be followed in council meeting procedures. There is also no prohibition against procedure by these rules.

Thus, it is of no consequence whether the Mayor either seconds a motion, or refrains from doing so.

3. Section 14-10-3, N.M.S.A., 1953 Compilation states that:

"In all municipalities, the mayor {⁸¹} shall vote only when there is a tie vote."

Section 14-11-2 (E) supra, states:

"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 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."

Therefore, unless this municipality has a requirement for the certain percentage, the one to one vote tie can be voted on by the mayor.

4. The council may not hire an employee without recommendation of the mayor.

On the contrary, Section 14-10-6, N.M.S.A., 1953 Compilation states in relevant part:

"Subject to the approval of a majority of all members of the governing body, the mayor shall:

(1) Appoint all officers and employees, except those holding elective office; . . ."

By: Frank N. Chavez

Assistant Attorney General