

Opinion No. 71-46

March 11, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Mr. Edward P. Moya Chief, Local Government Division Department of Finance & Administration Executive Legislative Building Santa Fe, N. M. 87501

QUESTIONS

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1. What number constitutes a quorum in a municipality with a mayor and four council or board of trustee positions?
2. Is the mayor counted in determining whether or not a quorum is present?
3. May the mayor cancel a regularly scheduled meeting of the council or board of trustees?

CONCLUSIONS

1. Three.
2. Yes.
3. No.

OPINION

{*64} ANALYSIS

The factual background as related to this office is as follows. In the mayor-council (trustees) municipality of Ruidoso Downs there are four councilman positions and a mayor position. At the moment one of the four councilman positions is vacant. Efforts to fill the vacancy have not yet been successful. None of the names submitted by the mayor have been approved by the council. Recently at a regularly scheduled meeting of the governing body the mayor and one councilman did not attend. The other two councilmen were present and attempted to fill the existing councilman vacancy. These councilmen have requested that you determine whether their action was valid.

The real question in this request is what constitutes a quorum in a mayorboard of trustees municipality and is the mayor to be counted in determining whether or not a quorum is present.

We will say initially that this office is fully aware that certain provisions in the municipal code (Sections 14-1-1 et seq., N.M.S.A., 1953 Comp.) indicate that the mayor is not to be considered a member of the municipal governing body -- particularly the general definition of "governing body" contained in Section 14-1-2 F, **supra**. Therefore, an argument has been advanced that the mayor may not be counted in determining the presence or absence of a quorum at a council meeting.

This office cannot agree with this approach and conclusion. When you have a specific question, as we do here (requirements for a quorum), you look to see if there is a specific statute on the specific question. In this case there is, namely Section 14-11-2, **supra**, the heading and pertinent provisions of which read as follows:

"GOVERNING BODY -- CORPORATE AUTHORITY -- LEGISLATIVE BODY -- MEMBERS OF COUNCIL AND BOARD OF TRUSTEES -- **QUORUM**. --

...

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

...

D. **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** nor more than ten councilmen or trustees." (Emphasis added.)

The legislature could hardly have been more specific on the make-up of the governing body for quorum purposes. Based on this provision we held in Attorney General Opinion No. 68-97 that the mayor is counted in determining whether a quorum is present. The same conclusion was reached under old Section 14-16-3, now repealed. Attorney General Opinion No. 60-98.

A majority of the members of the governing body being needed for a quorum, and the mayor being a member of the governing body, in the case of Ruidoso Downs that means three members of the governing body must be present in order to have a quorum. The prevailing view seems to be that even though a local governing body is at less than full strength, a quorum is decided on the basis of the original full membership. See Annotation in 43 A.L.R. 2d 701.

We conclude then that the purported action taken by the board of trustees when only two members were present was a nullity.

This being the case, the answer to your third question is only important to the governing body for future guidance. That question is whether the mayor, acting alone, may cancel a regularly scheduled meeting of the Board of Trustees. Such regular meetings are set by the governing body pursuant to Section 14-11-3, **supra**. Paragraph (4) thereof

provides that the governing body shall "determine the time and place of holding its meetings, which shall be open to the public." Thus action by the governing body is also necessary to cancel a regularly scheduled meeting.

By: Oliver E. Payne

Deputy Attorney General