

## **Opinion No. 71-94**

August 2, 1971

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** Carlos J. Jaramillo, Director Alcoholic Beverage Control  
Lew Wallace Building  
Santa Fe, N.M. 87501

### **QUESTIONS**

#### **QUESTIONS**

If an elected member of a municipal council chose to resign his elected post voluntarily, would that council member have a voice in selecting a successor to the vacancy resulting from the voluntary resignation of such member?

#### **CONCLUSION**

Yes.

### **OPINION**

#### **{\*138} ANALYSIS**

Pursuant to Section 14-11-1, N.M.S.A., 1953 Comp., any vacancy on the governing body of a mayor-council municipality shall be filled by appointment of a qualified elector by the mayor of the municipality with the advice and consent of the governing body.

Article XX, Section 2 of the New Mexico State Constitution provides that "(e)very officer, unless removed, shall hold his office until his successor has duly qualified." By virtue of this constitutional provision, the resignation of a member of a city council creates a condition by which the authority of the mayor and council to appoint a successor under Section 14-11-1 is invoked. The resignation does not, however, affect the status of the resigning member with respect to his office until a successor has been duly qualified. Accordingly the resigning member may continue to serve until his successor is named and qualified and thus he may participate in the selection of his successor. See *Haymaker v. McCain*, 22 N.M. 400, 168 P 248 (1917).