

**Opinion No. 16-1787**

April 29, 1916

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. R. M. Tigner, Roswell, N. M.

**As to procedure in filling a vacancy in a city council.**

**OPINION**

{\*358} I have today received your letter of the 27th instant in which you ask my opinion as to how a vacancy in the city council of Roswell is to be filled. You say that the Mayor contends that he has the exclusive right to name the man to fill this vacancy, while others contend that the appointment is to be made by the President {\*359} of the council, and that the one named by him must receive a majority vote of the council. You further say that you have consulted an attorney who tells you that a vacancy in the council is to be filled by the council itself and that the Mayor has nothing to do with it, in support of which he cites sub-division 87 of Section 3564 of the Codification of last year.

Your adviser is entirely correct as the sub-division of the statute referred to distinctly declares that all vacancies in any city council shall be filled by appointment of such council. Any member of the council may nominate a person to fill its vacancy and the election would be held in accordance with the rules of the council as to voting upon any other matter which might come before it. The only way that the Mayor could participate would be in case of a tie vote and then, as provided in Section 3590, he is authorized to vote, but not otherwise.

The question of the filling of vacancies of this kind has been presented to this office several times but as far as I recollect, it never has been coupled with any contention that the Mayor had any power of appointment to fill such vacancy, and we have always said that vacancies must be filled in the matter provided in the eighty-seventh sub-division of the statute.