

Opinion No. 17-2055

September 28, 1917

BY: C. A. HATCH, Assistant Attorney General

TO: Hon. Henry Westerfeld, Mayor City of Albuquerque, Albuquerque, New Mexico.

Special Meeting of City Council Cannot Be Called Without Consent or Action of the Mayor.

OPINION

We have your favor of September 27th, wherein you ask the opinion of this office relative to two questions therein submitted.

The first question is, whether Section 3601 of the 1915 Codification permits the calling of special meetings by the City Council, without the consent or action of the Mayor. Answering this inquiry, we have to advise, that portion of the Section of the statute referred to is as follows:

"And the Mayor and any three members may call special meetings by notice to each of the members of the council, personally served or left at his usual place of residence."

The above seems to be the only authority or regulation given or made by the statute for the calling of special meetings by the City Council. The general rule regarding the calling of special meetings is that only two things are essential to the validity of such meetings. First: That authority exists to call such meeting. Second: That it is called pursuant to such authority. Under a statute providing:

"Special meetings may be called by any two trustees in writing filed with the clerk, who shall thereupon seasonably notify all the trustees of the time and place thereof in the manner directed by the by-laws."

The Supreme Court of the State of Wis. in the case of Kleimenhagen et al, v. Dixon, et al, reported in Volume 100, N. W. Reporter, p. 826, said:

"It is evident that this statute provides for only two classes of meetings, namely, regular and special meetings, **which must be held and called as directed**. There is no dispute but that the meetings of the board at which the drain in question was authorized were not regular, nor adjournments of regular, meetings. No written calls for special meetings by two members were filed with the clerk. No other class of **meetings is provided for**, nor can meetings be called in a manner different from those appointed by the statute. The powers of the board in this regard are limited to the express grants of the statutes, as in all other respects."

In view of the above authority, and that the statute makes no provision for the call of a special meeting other than is found in Section 3601, we conclude it was the intent of the Legislators to have special meetings of city councils called in the manner prescribed by said section, and, therefore, a city council could not call a special meeting without the consent or action of the Mayor. In this connection we might call your attention to another general rule, which is, that if all members are present at a special meeting, defects in the manner to call and notice are deemed to have been waived.

As to your second inquiry concerning Section 3625, and whether or not the city council at any meeting after a regular meeting with a full quorum, has been held, can then by the regular vote, over-ride the Mayor's veto of a previous ordinance, we advise as follows:

Section 3625 provides:

"If any ordinance, resolution or other legislative action of the council of cities or boards of trustees of towns has been by the mayor disapproved, the same may be reconsidered by the council or board of trustees at its next regular meeting or at the next meeting at which a quorum is present, and if, after such reconsideration two-thirds of the members of the council of cities or boards of trustees present, voting, agree to pass such ordinance, resolution, or other legislative action, then the mayor shall declare the same to have been passed, and the same shall become a valid ordinance or resolution."

Under the above statute it is seen the only authority given cities or boards of Trustees to reconsider legislative action, which has been disapproved by the mayor, is at the next regular meeting, or at the next meeting at which a quorum is present. We take it this section means that such reconsideration must be had at the first regular meeting after the disapproval by the mayor, if a quorum is present; if no quorum is present at this first regular meeting, then at the next meeting at which a quorum is present. In short, we think the statute means what it says, and in order to reconsider a bill which has been disapproved by the mayor, it must be done in the manner and at the time provided by the statute.