

Opinion No. 38-2051

September 16, 1938

BY: FRANK H. PATTON, Attorney General

TO: Mr. C. R. McIntosh City Attorney Santa Fe, New Mexico

{*278} I have your letter of September 15th in regard to the right of the mayor to cast the deciding vote when there is a tie among other members of the city council upon confirmation of appointees of such mayor.

This letter is by no means to be construed as a binding or official opinion because of the fact that this office does not ordinarily give legal advice to municipalities and the matter presented by you is purely local in its nature.

It is, however, given to you in an advisory capacity as we are always glad to assist when we can find the time to do so.

Section 90-601, New Mexico Statutes Annotated, 1929 Compilation provides that the corporate authority of cities organized under this chapter shall be vested in a mayor and a board of aldermen, to be denominated the city council, together with such other officers as are in this chapter mentioned or may be created under its authority.

The substance and effect of Chapters 60 of the Session Laws of 1937, and 84 of the Session Laws of 1931, are that the mayor is to be the presiding officer and chief executive of the city council, and under the 1931 law it is specifically provided that the mayor shall have the right to vote when there is a tie vote but not otherwise.

These two statutes, in the main, relate to the same subject-matter and I do not believe that it is necessary to have to make any determination as to whether the 1937 law supersedes the 1931 law. Apparently, both statutes are to be interpreted harmoniously and without conflict.

Regardless of the statutory provision providing for the right of the mayor to cast a deciding vote in cases of ties, I think we may also be safe in saying that under the general rules of parliamentary practice and procedure the presiding officer has this right and privilege.

The question then is as to whether or not the mayor may cast such deciding vote when his own nominations are involved, and I find the author in 43 Corpus Juris 509, Section 781 states that the mayor is permitted to cast a deciding vote even when the tie vote is on confirmation of his nominees.

I have hurriedly consulted the case of Carroll vs. Wall, 10 P. 1, and this case supports the text cited.

{*279} Also, in the case of State vs. Yates, 47 P. 1004, I find that the statutes involved were similar to our statutes and the court held that by virtue of the language of the statute the mayor was actually a member of the city council and that he had a right as the presiding officer to cast the deciding vote upon his own nominees when questions of confirmation arose.

This virtue is likewise supported by McCourt vs. Beam, in which case similar statutes were also involved and it was held that the mayor had the right to vote upon questions of confirmation of his own nominees.

In view of the foregoing, it apparently is the law that in the case presented by you the mayor would have the right to vote in a case of a tie of the remaining members of the city council on questions of confirmation of his appointments.