

Opinion No. 66-61

May 13, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Alderman Allen A. Hill, 104 Wabash Street, Lordsburg, New Mexico

QUESTION

FACTS

At the organizational meeting of the governing body held on the second Monday following the municipal election, the Mayor of Lordsburg submitted for confirmation the names of persons to fill appointive offices and the names of persons to be employed by the municipality. The list of names omitted seven persons then employed by the municipality -- the mayor stating that it was a reduction of work force. After considerable deliberation the council approved the entire list as submitted. Subsequently, the Council voted to rescind the approval action taken at the organizational meeting.

QUESTIONS

1. Could the mayor omit the names of seven present employees from the list of proposed officials and employees thereby resulting in their discharge?
2. Can the Council effectually rescind its original approval action?

CONCLUSIONS

1. Yes.
2. No.

OPINION

{*75} ANALYSIS

Section 14-10-5, N.M.S.A., 1953 Compilation (P.S.), a portion of the new Municipal Code, provides that:

"At the organizational meeting of the governing body, which shall be held on the second Monday following the election, the mayor shall submit, for confirmation by the governing body, **the names of persons who shall fill the appointive offices of the municipality and the names of persons who shall be employed by the municipality.** If the governing body fails to confirm any person as an appointive official

or employee of the municipality, the mayor at the next regular meeting of the governing body shall submit the name of another person to fill the appointed office or to be employed by the municipality." (Emphasis added.)

As will be noted, there is no requirement that the mayor include on the list the names of persons then employed by the municipality. In fact, there is no restriction whatever placed on his discretion as to the names he submits. What effect, if any, a merit system ordinance adopted pursuant to Section 14-12-4, N.M.S.A., 1953 Compilation (P.S.) would have on the mayor's discretion we need not decide since it is our understanding that the City of Lordsburg does not have a merit system ordinance.

Based on Section 14-10-5, supra, it is our firm conviction that the mayor had the authority to include or omit any name he wished on the list presented to the Council at the organizational meeting. Accordingly, we answer question No. 1 in the affirmative.

We turn now to question 2 which involves the authority of the Council to rescind its original approval action. We do not believe the Council has the authority to rescind its approval action.

First, if the Council could rescind its approval action, the submission of a list of names would be rendered relatively meaningless. It could very well result in chaos in government if, at every meeting, the mayor had to submit a new list. And we would point out that even if the Council could rescind its action, there is no way that the mayor could be forced to include on any new list the names of the seven omitted employees. Rescission would not automatically result in the reemployment of these persons. Reemployment could only be accomplished by the mayor including these names on his list and obtaining Council approval.

The only power the Council has in the area of appointment and employment is one of approval or disapproval -- a veto power. The Council does have the power of discharge by majority vote, but it has no power of appointment or employment.

The mayor, by virtue of Section 14-10-4, N.M.S.A., 1953 Compilation (P.S.), is the **chief executive** officer of the municipality. Such being the case, an almost perfect analogy may be drawn to the operation of the state and Federal government. When the governor or the president is required to submit the name of a proposed appointee to the State Senate or the United States Senate for confirmation, and once such appointee is confirmed the action is final. Such bodies cannot, at some time in the future, rescind their action. We have the same situation here. The Council was to consider each name submitted {*76} and either approve the person's appointment or reject it. Having approved each name at the organizational meeting that action was final. Hence we answer question No. 2 in the negative.