

Opinion No. 82-22

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OPINION OF: Jeff Bingaman, Attorney General

BY: Douglas Meiklejohn, Deputy Attorney General

TO: The Honorable Dick Minzner, New Mexico State Representative, 4462 Avenida Del Sol, N.E., Albuquerque, New Mexico 87110

ELECTED OFFICIALS: LEGISLATURE AND LEGISLATORS, CONSTITUTION - NEW MEXICO

The Secretary of State presides in the New Mexico House of Representatives after an election is held for speaker which results in a tie between two candidates.

QUESTIONS

Does the Secretary of State preside in the New Mexico House of Representatives after an election is held for speaker which results in a tie between two candidates?

CONCLUSIONS

Yes.

ANALYSIS

Article IV, Section 8 of the New Mexico Constitution provides, in pertinent part:

"The house of representatives shall be called to order in the hall of said house by the secretary of state. He shall preside until the election of a speaker, who shall be the member receiving the highest number of votes for that office."

OPINION

Constitutional provisions are to be interpreted according to the rules of statutory construction. **Postal Finance Co. v. Sisneros**, 84 N.M. 724, 507 P.2d 785 (1973). Those rules provide both that statutes are to be given effect as written, **State v. Elliott**, 89 N.M. 756, 557 P.2d 1105 (1977), and that statutes which are unambiguous are not subject to construction. **New Mexico Hospital Ass'n. v. Employment Security Comm'n.**, 92 N.M. 725, 594 P.2d 1181 (1979). It is also a rule of statutory construction that the word "shall" is mandatory. **City of Albuquerque v. Cauwels & Davis, Mgmt.**, 96 N.M. 494, 632 P.2d 729 (1981). Finally, constitutional provisions which prescribe exact procedures for certain activities are mandatory, and must be complied with for the

action taken to be valid. **State ex rel. Wood v. King**, 93 N.M. 715, 605 P.2d 223 (1979).

Section 8 of Article IV is both unambiguous and mandatory. It provides that the Secretary of State shall preside until a speaker is elected. It also states that the member who receives the highest number of votes shall be speaker. The plain language of the section requires that the Secretary of State preside until there is a vote in which one member does receive the highest number of votes, and is thereby elected speaker. If the vote is a tie, no one member has received the highest number of votes, and no speaker is elected. The Secretary of State therefore presides after a vote which results in a tie.

ATTORNEY GENERAL

Jeff Bingaman, Attorney General