

February 12, 2008 Presentment of Bill

Paula Tackett, Director
Legislative Council Service
411 State Capitol
Santa Fe, NM 87501

Re: Opinion Request – Presentment of Bill under Article IV, Section 22 of the New Mexico Constitution

You asked whether a bill is presented to the Governor for purposes of Article IV, Section 22 of the New Mexico Constitution if, in the Governor's absence, the bill is accepted by the Lieutenant Governor. As discussed below, unless the Governor has informed the Legislature that certain people in his office are not authorized to accept bills on his behalf during a legislative session, it would be reasonable for the Legislature to consider a bill presented to the Governor if it was delivered to the Governor's Office and accepted by the Lieutenant Governor.

Reportedly, the Legislature attempted to deliver certain spending bills to the Governor between 4:00 and 5:00 p.m. on Saturday, February 9, 2008. The Governor and his staff were not in the office and legislative staff members were unable to contact them. The Lieutenant Governor eventually accepted the bills at approximately 6:00 p.m. The Governor contends that the Lieutenant Governor did not have authority to accept the bills on his behalf and that the bills will be treated as if they were presented this morning.

Article IV, Section 22 provides, in pertinent part: "Every bill passed by the legislature shall, before it becomes law, be presented to the governor for approval." Once presented, the Governor has three days (not counting Sunday) to approve the bill or return it to the Legislature with his objections. N.M. Const. art. IV, § 22. A bill that is returned to the Legislature will not become law unless it is approved by two-thirds of the members of each house of the Legislature. *Id.* The Governor's constitutional veto power is "an executive encroachment on the legislative function, an exception to the doctrine of the separation of powers, and, as such, it must be strictly construed." N.M. Att'y Gen. Op. No. 79-13 (1979).

It is unclear whether Article IV, Section 22 requires the Governor to keep his offices open or otherwise make himself available at all times during a legislative session to accept bills presented by the Legislature. However, the Governor cannot intentionally evade the Legislature's attempt to present a bill to delay the time of presentment and his constitutional duty to act. *Cf. Opinion of the Justices*, 412 So.2d 279, 280-81 (Ala. 1982) (holding that the governor could not "thwart the constitutional process by which legislation becomes law" by taking deliberate acts, such as locking his office doors during regular business hours, to avoid presentation of a bill passed by the legislature).

The Governor's Office likely has procedures in place under which employees in the Governor's Office routinely accept bills delivered to the Office during a legislative session. In this case, the Lieutenant Governor accepted the bill duly presented by the Legislature on Saturday. The Governor apparently had not previously notified the Legislature that the Lieutenant Governor was not authorized to accept bills on his behalf. Thus, it was reasonable for the Legislature to assume that delivery of the bill to the Governor's Office and acceptance by the Lieutenant Governor constituted proper presentment for purposes of Article IV, Section 22.

If we may be of further assistance, please let us know. Your request to us was for a formal Attorney General's Opinion on the matters discussed above. Such an opinion would be a public document available to the general public. Although we are providing you our legal advice in the form of a letter instead of an Attorney General's Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the public.

Sincerely,

ELIZABETH A. GLENN
Assistant Attorney General

cc: Attorney General Gary K. King
Chief Deputy Attorney General Albert J. Lama
James Jimenez, Governor's Chief of Staff