Opinion No. 03-02

January 16, 2003

OPINION OF: PATRICIA A. MADRID, Attorney General

BY: ZACHARY SHANDLER, Assistant Attorney General

TO: The Honorable Steve Komadina, State Senator, P.O. Box 2085, Corrales, NM 87048

QUESTION

Does a mayor in a mayor/council form of government have the right to break a tie vote?

CONCLUSION

A mayor always has the right to break a tie vote even when a supermajority vote is required. Therefore, this Opinion Letter overrules N.M. Att'y Gen. Op. No. 90-02 (1990).

FACTS

The Village of Corrales has a mayor/council form of government. There are four councilors and a mayor.

ANALYSIS

There are two rules of statutory construction that apply to this matter. First, a statute should be read according to its plain, written meaning. **See Wilson v Denver,** 125 N.M. 308, 314, 961 P.2d 153 (1998). Second, a "statute, together with other statutes in pari materia, must be read together to ascertain the legislative intent." **Roth v. Thompson,** 113 N.M. 331, 334, 825 P.2d 1241 (1992).

New Mexico law, in pertinent part, reads:

The mayor of a municipality is the presiding officer of the governing body. In all municipalities the mayor shall vote only when there is a tie vote.

NMSA 1978, § 3-11-3 (1992).

In those municipalities where a mayor has no vote except in case of a tie vote and there is a requirement that a certain fraction or percentage of the members of the entire governing body or of all the members of the governing body or of the entire membership of the governing body or similar language other than the requirement of a simple majority vote for the measure, the mayor shall not be counted in determining the actual number of votes needed.

NMSA 1978, § 3-12-2(E) (1992).

Some parties, including a 1990 Attorney General Opinion Letter, have read NMSA 1978, Section 3-12-2(E) to explain the circumstances when the mayor is not permitted to vote. **See** N.M. Att'y Gen. Op. No. 90-02 (1990) (opined that a mayor does not have the right to break a tie vote in a supermajority vote--i.e. when the affirmative vote of more than a majority of a council's members is required for passage). The statute, however, explains the circumstances where the mayor is not included in calculations to determine the number of votes required to pass a measure. The act of not counting the mayor for calculations of the number of voters is different from prohibiting him from voting. Nothing in Section 3-12-2(E) takes away the mayor's right to vote in the event that the governing body's vote ends in a tie. Had the Legislature wanted to preclude the mayor from voting in situations where a supermajority vote was required, we believe the Legislature would have done so expressly. Accordingly, after reconsidering the arguments on both sides of the issue, we now conclude that the better position is to adhere to the plain language of the pertinent statutes, which permit a mayor to vote in the event of a tie even when a supermajority vote is required.