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OPINION
OF
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Opinion No. 88-74

BY: Scott D. Spencer
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TO: Alex Valdez
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Executive Legislative Building
Santa Fe, New Mexico 87503

QUESTION:

Whether Section 3-11-5(A) NMSA (1978) prohibits a mayor from submitting names to the governing body for appointment to offices, if the mayor has not submitted said names during the organizational meeting of the governing body?

CONCLUSION:

No.

ANALYSIS:

Section 3-11-5(A) provides, in part:

At the organizational meeting of the governing body ... 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.) At the Village of Reserve's organizational meeting on March 21, 1988, the mayor did not submit a name for the position of village clerk to the governing body. The question is whether Section 3-11-5(A) NMSA (1978) prohibits the mayor, at subsequent meetings of the village governing body, from submitting a name for the position of county clerk.

The first sentence of Section 3-11-5(A) requires the mayor, at the organizational meeting of the governing body, to submit a name for confirmation by the governing body. However, the rules of statutory construction require each word or phrase used in a statute to be construed in connection with every other word, phrase or portion, so as to accomplish the legislative purpose. Peyton v. Nord, 78 N.M. 717, 437 P.2d 716 (1968); Butts v. Woods, 4 N.M. 343, 16 P.617 (1888). Applying this rule to Section 3-11-5(A), the first sentence of this provision must be read in conjunction with the second.

The second sentence of Section 3-11-5(A) provides that "if the governing body fails to confirm any person as an appointive official ... the mayor at the next regular meeting ... shall submit the name of another person...." Since there can logically be no confirmation without an appointment, the governing body would fail to confirm an appointive official if no name were submitted, and pursuant to second sentence of 3-11-5(A) the mayor must submit another name.

Construing Section 3-11-5(A) in its entirety, the failure of a mayor to submit a name to the governing body at the organizational meeting does not preclude him or her from doing so at subsequent meetings. Further support for this conclusion can be found in Section 3-11-6 NMSA (1978).

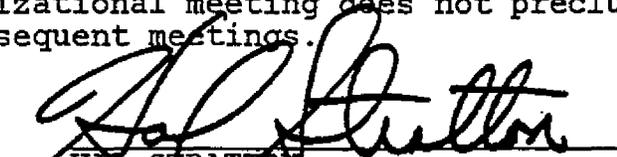
Section 3-11-6 NMSA (1978) provides in part:

- A. Subject to the approval of a majority of the governing body, the mayor shall:
- (1) appoint all officers and employees except those holding elective office...

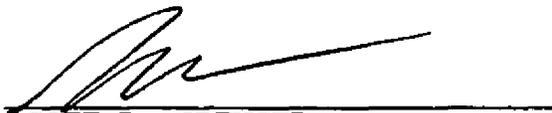
Under the general rule of "in pari materia," the various portions of a statute or instrument, and all other acts or instruments relating to the same subject or having the same general purpose, are to be read together, as constituting one law or agreement, such that equal dignity will be given to each. Ratliff v. Fleener, 43 Okl. 652, 653, 143 Pac. 1051, 1052 (1914). See Allen v. McClellan, 75 N.M. 400, 405 P.2d 405 (1965).

If the mayor were precluded from making appointments at subsequent meetings, this would effectively strip him or her of all appointment powers. This would be inconsistent with Section 3-11-6(A), and in violation of the in pari materia rule of statutory construction.

In light of the foregoing, it is our opinion that Section 3-11-5(A) should be read in its entirety, and that Sections 3-11-5(A) and 3-11-6(A) should be read in conjunction with one another; and therefore, the failure of a mayor to submit a name to the governing body at the organizational meeting does not preclude him or her from doing so at subsequent meetings.



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