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## **THERE ARE NO COMMISSIONERS IN MAYOR-COUNCIL MUNICIPALITIES**

Over the course of the years, we have received a number of inquiries concerning the duties and powers of "commissioners" in mayor-council municipalities.

### **New Mexico statutes do not provide for any position called a commissioner in a mayor-council municipality.**

New Mexico statutes provide for commissioners only in the commission-manager form of government, where the five commissioners serve as the legislative body and choose one of their number to serve as mayor and presiding officer of the governing body.

Some Home Rule charters in New Mexico provide for a governing body whose members are called commissioners rather than trustees or councilors. In those Home Rule charter municipalities, the scope of a commissioner's powers and duties is provided by the charter.

In other states, there may be municipal elected officials who head departments and are called "commissioners," but not in New Mexico.

### **THE "COMMISSIONER" PROBLEM**

It would appear that in some mayor-council municipalities it has been the custom for the mayor to designate various members of the council or board of trustees as the council's primary contact for various municipal departments in order to spread the work load and develop some specialized knowledge of the work of those departments among the governing body members.

In many municipalities, this liaison assignment is merely an informal matter; in others, the governing body liaison is apparently referred to as "Commissioner of...(such-and-such)."

The inquiries to the League begin to occur when employees, department heads or even other elected officials - such as the mayor - perceive the "commissioner" as exercising some kind of executive authority over the department's employees or operations.

Such inquiries generally concern the duties and powers of the "commissioner" and frequently go something like this:

*"Does the Police Commissioner have the right to decide who we hire or fire?"*

*"Can the Water Commissioner tell the employees what jobs to tackle first and over-rule the assignments the Superintendent makes?"*

*"Can the Park Commissioner tell us where to get our supplies?"*

*"Can the Fire Commissioner delete items from our budget?"*

The above questions all have one answer in any non-charter New Mexico municipality: **NO.**

### **NO STATUTORY AUTHORITY**

Neither the New Mexico Constitution nor the New Mexico Statutes grant authority to individual council members or trustees to individually exercise any of the above powers. Conceivably such powers could be authorized by a home rule charter adopted by majority vote of the qualified electors of the municipality.

Even in the commission-manager form of municipal government, an individual commissioner does not exercise executive or managerial powers, nor does he or she exercise legislative powers except in cooperation with the other commissioners.

As a matter of fact, in a mayor-council municipality, Section 3-12-2A, NMSA 1978, says:

*"The corporate authority of a municipality is vested in the governing body which shall constitute the legislative branch of the municipality and shall not perform any executive functions except those functions assigned to it by law." [Emphasis added.]*

The governing body is then given nine mandatory functions and powers and three permissive functions and powers. Although one function [§3-12-3A(3)] says that the governing body will "manage and control" municipal finances and property, it is clarified under the section on municipal finances [§3-37-1 through 3-37-7] that this management and control is legislative.

Since non-charter municipalities and their elected officials have only those powers conferred on them by general law or granted them by specific state legislation, it appears to us that a governing body member referred to as a "commissioner" has **no executive powers**.

In a mayor-council municipality, executive powers are reserved to the mayor, or, if a manager position has been established by ordinance, to the manager. Thus, an individual "commissioner" would be acting improperly in independently hiring or firing, assigning duties, directing purchase from certain vendors, revising a department budget, or a host of other managerial or executive decisions.

Further, we can find no authority for the mayor or the governing body to **delegate** executive duties with final decision powers by ordinance to any official other than a city manager established according to statute.

The manager, of course, is an appointed official rather than an elected official and may be called to account for his/her actions and disciplined or fired if the governing body does not agree with the actions taken or decisions made.

### **WHAT ABOUT LIAISONS?**

We are not discouraging assignment of liaison and oversight responsibility for one or more departments or functions to individual governing body members. In fact, such assignments may be and have been very effective in supplying the governing body as a whole with more in-depth knowledge and better communications with those departments and functions.

A few examples of valuable work which such an assigned governing body member may do are:

- funneling citizen questions and complaints to the department head,
- bringing concerns and suggestions of department heads and employees to the governing body,
- recommending policy changes or capital expenditures which would improve the functioning of the department, or
- working with the department head to recommend changes in organization or staffing levels to the governing body.

### **PLAY BY THE RULES**

So long as the liaison and oversight responsibility is clearly understood by all parties to be on behalf of the governing body as a whole and as serving in an **advisory and facilitating** capacity, **not an executive** capacity, such assignments may be very useful indeed to the governing body.

Then the title "commissioner" may be seen in its proper light as honorary rather than official. The important thing is that the "commissioner," the other governing body members, the mayor, the employees and the public all recognize the limits of the "commissioner's" authority and thus know and abide by the Rules of the Game.