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OPINION NO. 2001-01

TO: Janice L. Graziano, City Clerk
FROM: Stephen M. Kemp, City Attorney
DATE: August 27, 2001
SUBJECT: Personnel Board Action and Organization

QUESTION:

What is the action of the Personnel Board taken on August 31, 1999 where only two of its members were present a legal and binding action?

OPINION:

Your memorandum requesting this Opinion adds some important background together with the changes in the City Code. Prior to the adoption of Ordinance 98-103, the City's Personnel Board is comprised of seven members. At the time that Ordinance 98-103 was adopted, the Personnel Board had two seats that were vacant and one seat that would expire that month, leaving a total of four members.

Ordinance 98-103 was enacted on September 22, 1998 and assuming the Mayor's signature on September 23rd became effective on October 23, 1998. At that point in time, the Board became a five-member board. Subsequently, with the term expiring in 1998 the board was reduced to four members. At the time the Ordinance was enacted, conceivably the two vacancies could have been filled and it would have taken three years to reduce the board down to three members and one alternate. However, that occurred sooner due to the number of vacant seats. After the third seat became vacant in 1998 through expiration of a term, there was no ability to appoint a new member to that seat in 1999 for a term ending in 2003; therefore, the board was reduced to four members. This four-member board consists of three active members and one alternate. Therefore, in August of 1999 a quorum of two would have been required. There being two members present regardless of whether it be one alternate and one regular or two regular, there were sufficient members for a quorum. Therefore, it is our conclusion that the action of the board taken on August 31, 1999 was binding and legal. If you need any further information, please let me know.