

Opinion No. 55-6322

November 18, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Richard F. Rowley, District Attorney, Ninth Judicial District, Clovis, New Mexico

You have asked the opinion of this office concerning the proper action for the officials of the Village of Melrose to take with respect to publishing a franchise ordinance.

Section 14-39-1, N.M.S.A., 1953 Compilation, contains the following pertinent language:

". . . Provided, however, that in no event shall any such franchise ordinance become effective until at least thirty days after its enactment, during which time it shall be published in full in at least two weekly issues of a newspaper published in such municipality; . . ."

You state that there is no newspaper published in the Village of Melrose and ask if posting would be sufficient since § 14-25-7, N.M.S.A., 1953 Compilation, has such a provision.

The last above cited section provides for publication of city ordinances in a newspaper of general circulation in the city with a proviso that the same may be posted if no newspaper is published within the corporate limits. It is, of course, apparent that § 14-39-1 contains no such proviso, and it would appear, therefore, that no such method, that is, of posting, could exclusively be followed in the publication of franchise ordinances.

This office has previously ruled in Attorney General's Opinion No. 5146, dated April 23, 1948, a copy of which is attached hereto, that a newspaper can be a legal newspaper published within a county although it may be printed elsewhere. The same analogy would apply with equal force to a requirement that a notice be advertised in a newspaper "published in a municipality".

In Volume 66 C.J.S., P. 26, the following can be found:

"Where no newspaper of general circulation is published within the jurisdiction of the officer authorized to make the publication, by force of statute, the publication may be made in a newspaper of general circulation published nearest thereto."

In view of these authorities and analogies, it is the opinion of this office that a franchise ordinance in a municipality not having a newspaper published therein, must be published in a newspaper of general circulation in said municipality which may be printed elsewhere.

Hoping that this has been of service to you, I remain

By J. A. Smith

Assistant Attorney General