

Opinion No. 55-6326

November 22, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. J. C. Enloe, District Attorney, Seventh Judicial District, Socorro, New Mexico

You have presented for our opinion the question:

May the board of trustees of an incorporated village, by ordinance, provide for the election of a police judge under the provisions of § 14-16-11, N.M.S.A., 1953?

Section 14-16-11, provides:

"The board of trustees of any incorporated village shall have power to provide by ordinance for the election of a treasurer, a village marshal and such other officers as they may deem necessary for the good government of the corporation; to prescribe their duties where the same are not defined by law, and the compensation or fees they shall be entitled to receive for their services and to require of them an oath of office and a bond with surety for the faithful discharge of the duties of their respective offices. The election of such officers shall be at the regular election for village officers. The board of trustees is empowered to appoint such officers until the next election and to likewise fill vacancies therein."

Section 14-16-11 above is § 6, Chapter 117 of the Laws of 1909. It should be noted that § 15 of the same chapter, now § 14-23-8, N.M.S.A., 1953, provides:

"The justice of the peace of the precinct wherein any incorporated village is situated shall have jurisdiction of all violations of ordinances made and published by the board of trustees under the provisions of this article."

The Legislature having specifically provided who shall be the judicial officer of the village, it would seem that the general power of the board of trustees to appoint, under § 14-16-11, "such other officers as they may deem necessary for the good government of the corporation;" would be limited by the specific provision contained in § 14-23-8. In construing several parts of the same act together, it is the generally accepted rule that a specific power or provision governs where a general power or provision in the same act can be construed to cover the same area.

Further, our Supreme Court has construed a statute applying to cities of a certain class, and very similar to § 14-16-11, as not authorizing the creation or election of the office of police judge by ordinance. *Stout v. Clovis*, 37 N.M. 30.

In that case, § 14-11-21, N.M.S.A., 1953, was construed, and that statute, among other things, provided:

". . . The commission shall create all offices in addition to those herein specified, which may become necessary for the proper carrying on of the work of the city . . ."

The strongest parallel between the language in § 14-11-21 and § 14-16-11 concerning the power to create offices is apparent. We deem *Stout v. Clovis*, supra, controlling in this situation.

For these reasons, your question is answered in the negative.

We have answered only the narrow question presented by you. At this time, we do not express an opinion on whether § 37-1-1, providing for police magistrates in "incorporated cities and towns" is broad enough to include incorporated villages.

We trust that this is of help to you.

By Santiago E. Campos

Assistant Attorney General