

Opinion No. 57-204

August 15, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Howard M. Rosenthal,
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TO: Paul W. Robinson, Esquire, District Attorney, 2nd Judicial District, Second Floor,
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QUESTION

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May the charter of a combined city and county organization provide for filling vacancies in the Commission thereof, contrary to the provisions of Article 20, Section 4 of the New Mexico Constitution?

CONCLUSION

Yes.

OPINION

ANALYSIS

Article 20, Section 4 of the New Mexico Constitution provides:

"If a vacancy occur in the office of district attorney, judge of the Supreme or district court, or county commissioner, the governor shall fill such vacancy by appointment, and such appointee shall hold such office until the next general election. His successor shall be chosen at such election and shall hold his office until the expiration of the original term."

Subsequently, on September 20, 1949, by amendment, Article 10, Section 4 was adopted. This provided for the creation of combined city and county corporations. Provisions therein seemingly related to your problem read:

"Any such city and county shall be permitted to frame a charter for its own government, and amend the same, in the manner provided by the legislature by general law for the formation and organization of such corporations." (Designated as Section A in order that reference may be easily made. The same technique will be used in the following.)

"The officers of a city and county, their compensation, qualifications, **term of office and manner of election or appointment**, shall be as provided for in its charter, subject to

general laws and applicable constitutional provisions." (Underlining ours. Designated as Section B.)

"Every such city and county shall have and enjoy all rights, powers and privileges asserted in its charter not inconsistent with its general laws, and, in addition thereto, such rights, powers, and privileges as may be granted to it, or possessed and enjoyed by cities and counties of like population separately organized." (Designated as Section C.)

"Nothing herein contained shall be construed to alter or amend the existing constitutional provisions regarding apportionment of representation in the legislature or in the boundaries of legislative districts or judicial districts, nor the jurisdiction or the organization of the district or probate courts." (Designated as Section D.)

It might be pointed out:

1. That the 1949 Amendment is subsequent in point of time, an item in its favor insofar as supersession is concerned.
2. That no specific mention of Article 20, Section 4, is made in the amendment.
3. That repeals of constitutional or statutory provisions by implication are repugnant in law.
4. That if two constitutional or statutory provisions are in seeming contradiction, if some interpretation can be drawn as will leave both provisions operative, such interpretation will be favored.

Article 20, Section 4 of the New Mexico Constitution is plain and unequivocal, and it must be presumed that both the Legislature and the people of New Mexico knew its existence and meaning at the time of the amendment aforesaid. Hence we must have recourse to Article 10, Section 4 to see if we can determine the intent of the amendment and whether that amendment was sufficiently asserted so as to be deductible from the contents.

The quotation above referred to as "A" indicates that the voters in the combined city and county corporation were intended substantial autonomy in the formulation of their own government - not complete autonomy, but substantial.

This is further supplemented by the quotation designated "B", at least up to the final clause providing "subject to general laws and applicable constitutional provisions." While the delegation of power to the charter voters would seem to vest authority therein to decide "term of office and manner of election or appointment", if such provision were not modified, the provision subjecting this delegation to "general laws and applicable constitutional provisions" would appear a modification constituting contradiction of this complete power delegation.

Provision designated "C" would appear definable as is "B". Thus the general grant of power and the modification of the same.

Provision designated "D" specifies that the power given the charter makers and voters shall not include authority to supercede existing constitutional provisions concerning certain named items, but not including the substance covered by Article 20, Section 4.

It is at this point that this office believes the intent of the amendment becomes most manifest. If certain restrictions are enumerated and others that might have been enumerated are omitted, it seems reasonable to draw the conclusion that the omitted restrictions are intended to be overruleable. Add to this the later date of the amendment Article 10, Section 4, and the presumption that the Legislature and the voters were aware of Article 20, Section 4, and further implemented by the fact that this interpretation would leave both constitutional provisions operative in the area covered by each, this office arrives at the conclusion that the question be answered in the affirmative.