

Opinion No. 59-201

December 11, 1959

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. Donn E. Hopkins State Planning Officer Department of Finance and Administration P. O. Box 1359 Santa Fe, New Mexico

QUESTION

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May a municipality delegate its local planning powers (not including platting or zoning powers) to another municipality?

CONCLUSION

No.

OPINION

{*311} ANALYSIS

Section 14-2-15, New Mexico Statutes Annotated, 1953 Compilation (P.S.) authorizes the municipalities to create by ordinance planning commissions with all the powers, authorities, jurisdiction and duties set forth in Article II, Section 14. Section 14-2-16, N.M.S.A., 1953 Compilation, defines the method of appointment of the personnel of the commission and Sections 14-2-18 and 14-2-21 designate its powers. In analyzing these sections, there would appear to be no legislative hurdle to overcome in delegating the local planning powers of one municipality to another municipality.

However Article V, Section 13 of the Constitution of New Mexico appears pertinent to the question at hand. It reads as follows:

"All district, county, precinct and municipal officers, shall be residents of the political subdivision for which they were elected."

{*312} You will note that this section requires municipal officers to be residents in the municipality for which they are elected or appointed. Therefore, if the members of the planning commission fall within the purview of the word "officers" our conclusion would have to be that they must be residents of the city or town in which they were to act.

The Supreme Court of the State of New Mexico had occasion to define "public officer" as one who has:

". . . the right, authority and duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is vested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public. The individual so invested is a public officer."

We believe that in 22 Ruling Case Law, page 381, Section 12, the chief elements of a "public officer" are well summed up. The specific position must be created by law; there must be certain definite duties imposed by law upon the incumbent and they must involve the exercise of some portion of the government power. A position which has these three elements is presumably an "office" while one which lacks any of them is a mere "employment." *Pollack v. Montoya*, 55 N.M. 390, 392.

Applying the yardsticks adopted by the above case, it is our conclusion that the membership of the Planning Commission must be held to be officers within the contemplation of the above cited constitutional provision. Their positions are created by law. Section 14-2-16, *supra*. The law imposes definite duties upon the commission which further involve the exercise of a portion of the municipality's powers. Section 14-2-18 and Section 14-2-18, *supra*. Therefore, it is our conclusion that members of a municipality's planning commission must be residents of the municipality which they are serving and one city or town could not designate the planning commission of another city or town to serve as its planning commission.

I trust this will answer your inquiry.

By: Thomas O. Olson

Assistant Attorney General