

Opinion No. 60-110

June 15, 1960

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

TO: Honorable Fabian Chavez, Jr. State Senator Santa Fe County Santa Fe, New Mexico

QUESTION

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- "1. Does Sec. 14-25-8, N.M.S.A., 1953 Comp. (PS), include as exempt from publication any code other than those specifically enumerated therein?
2. Under the above section, is it still necessary to publish the information that such code has been adopted with an appropriate reference to title and date of such code?
3. Does this amendment do away with the necessity of publication of ordinances other than those enumerated in Sec. 14-25-8, supra?
4. What is the definition of a "code" within the meaning of Sec. 14-25-8?"

CONCLUSIONS

1. No.
2. Yes.
3. No.
4. See analysis.

OPINION

{*482} ANALYSIS

Your first question is answered in the negative in view of the wording of § 14-25-8, N.M.S.A., 1953 Comp. (P.S.), which reads as follows:

"The governing bodies of H class counties and of incorporated cities, towns and villages, whether incorporated under general or special acts, are empowered and authorized to adopt by ordinance the conditions, provisions, limitations and terms of a Fire Prevention Code, a Building Code, an Electrical Code, a Plumbing Code, a Traffic Code, an Air Pollution Code, an Elevator Code or any of such codes, not in conflict with

any statute of the state or valid regulation issued by any board or agency of the state authorized to make such regulations; Provided any code so adopted shall provide for minimum requirements at least equal to the state code on the subject. Any such code may be adopted by reference to the proper title and date of the code alone without setting forth in the ordinance its conditions, provisions, limitations and terms, Provided that the ordinance shall in all cases specify at least one (1) place within the municipality or H class county where any such code so referred to will at all reasonable times be available and subject to inspection; and a copy of any such code shall be available upon request. Any amendment to any such code may be similarly adopted."

You will note that the provisos in this section use the words "any code so adopted" and "any such code" etc. The only reasonable construction of these words is that they are referring to the part of the section that has gone before and not to codes generally. The section enumerates the Fire Prevention Code, Building Code, Air Pollution Code and Elevator Code, or any combination of these codes. Applying the age-old rule of statutory construction *expressio unius est exclusio alterius* which was approved by our Supreme Court as early as 1881 in **In re Attorney General**, 2 N.M. 49, we are led to the inescapable conclusion that when the Legislature set forth certain municipal codes in this {*483} section, its intention was to exclude all other municipal codes from the effect of this section.

The answer to your first question then is no. The section applies only to those codes specifically enumerated therein.

Your second question is answered in the affirmative. Section 14-25-7, N.M.S.A., 1953 Compilation, provides, in effect, that all ordinances of a general or permanent nature or those imposing any fine, penalty or forfeiture shall be published in some newspaper of general circulation in the municipality. This section apparently requires that all such ordinances be published in their entirety. Section 14-25-8, supra, apparently provides that the codes enumerated therein need not be published in their entirety. It is not reasonable, however, to construe this section as doing away with any publication whatsoever. The ordinance adopting the code must still be published as provided in § 14-25-7, supra. It is our view that it was the intent of the Legislature in enacting this section only to provide that certain codes need not be published in toto. We are of the opinion that the fact of adoption of one of the enumerated codes must be published referring to title and date. While it is true that all citizens are deemed to know the law, it is only reasonable for the municipal authority at least to inform the public of adopted codes to which the public will be made subject. The proper manner of doing this as regards the codes enumerated in § 14-25-8, supra, is to publish the ordinance referring to the title and date of such codes in a newspaper.

Your third question is answered in the negative and requires little discussion in view of our discussion under your first question. Since § 14-25-8, supra, exempts only those codes therein enumerated. All ordinances adopted must be published in compliance with § 14-25-7, supra.

The word "code" is normally thought to connote a system of principles or rules. See Webster's New Collegiate Dictionary, "Code." Our Supreme Court has never had occasion to define the word. The Supreme Court of Washington has defined it as a system or complete body of law upon the subject to which it relates. **Davis-Kaser Company v. Colonial Fire Underwriter's Insurance Company**, 91 Wash. 383, 157 P. 870.

In the context in which the word is used here, we are of the opinion that the Legislature intended the word to mean a regulation or a group of regulations relating to a specific subject; for example, a Fire Prevention Code would be the complete body of municipal regulations dealing with fire prevention gathered together into a unit -- a code.

By: Boston E. Witt

Assistant Attorney General