

Opinion No. 64-80

June 10, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Jay F Rosenthal, Assistant Attorney General

TO: Honorable David F. Cargo, State Representative, Sunshine Building, Albuquerque, New Mexico

QUESTION

QUESTION

Do the proponents of disincorporation of a previously incorporated village have to bear any of the expenses of an election held to disincorporate?

CONCLUSION

No.

OPINION

ANALYSIS

In your letter of request, it is stated that this problem specifically involves the Village of Questa, New Mexico, which has recently been incorporated. The first Village election is going to be held in the near future and certain individuals have filed a petition for disincorporation, as provided for in the New Mexico Statutes, and the question of disincorporation is going to be submitted on the ballot with candidates for Village offices. A question has arisen as to whether or not these individuals proposing disincorporation must bear any of the costs of the election.

This question is answered by the New Mexico Statutes. Sections 14-4-1 and 14-4-3, N.M.S.A., 1953 Compilation (P.S.) provide the authority for incorporation of villages. Under these sections a petition signed by sixty per cent (60) of the owners or real estate in the area proposed to be incorporated must be submitted to the county commission. Along with this petition sufficient money to cover the costs of a census and survey must be submitted. After the census and survey are completed, to the satisfaction of the county commission as required by the statute, the commission must declare the village incorporated and order an election be held to elect the governing body of the village as required by Section 14-16-8 N.M.S.A., 1953 Compilation. It should be noted that the only costs of incorporation which fall upon the proponents is that of the survey and census as required by Section 14-4-2. The cost of the election is borne by the county.

Disincorporation is provided for in Section 14-8-1, N.M.S.A., 1953 Compilation. A petition indicating their wish to discontinue the corporate entity must be signed by one-fourth of the voters who may have voted in the last regular village election. Upon submission of this petition the county commission must order an election be held. This election is controlled by Section 14-8-4, N.M.S.A., 1953 Compilation, which provides in pertinent part:

"The vote for the purpose of disincorporation shall be taken in the same manner as in other municipal elections. . ."

This language is interpreted in Section 14-14-4 which provides that elections required to be held in the manner of municipal elections are governed by the provisions in Section 14-14-3. Section 14-14-3 requires these elections to be held and conducted in all respects in the manner prescribed for county elections.

There is no indication that the Legislature intended to tax the costs of disincorporation upon those who proposed or happened to sign the petition.