

Opinion No. 65-85

June 4, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Mr. Monroe L. Fox, Village Attorney, Chama, New Mexico

QUESTION

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1. May village ordinances be posted pursuant to Section 14-25-7 N.M.S.A., 1953 Compilation, if a newspaper of general circulation is distributed in the municipality but not actually printed within the the village limits?
2. If the answer to question 1 is "no", are ordinances valid which have been posted but not published?

CONCLUSIONS

1. No.
2. See analysis.

OPINION

{*146} ANALYSIS

Section 14-25-7, N.M.S.A., 1953 Compilation provides in pertinent part that:

". . . all by-laws of a general or permanent nature, and those imposing any fine, penalty or forfeiture, shall be published in some newspaper of general circulation in the municipal corporation, . . . Provided, however, that if no such newspaper is published within the limits of the corporation, then, and in that case, such by-laws may be published by posting copies thereof in three public places, within the limits of the corporation, two of which places {*147} shall be the post-office and the mayor's office of such town or city; . . ."

You advise us that since no newspaper of general circulation is **printed** within the corporate limits of Chama, all ordinances adopted by the Village in the past have been posted rather than published. This has also been the case in a number of other municipalities.

However, the Supreme Court of New Mexico ruled in the case of **State of New Mexico, ex rel., Sun Company, Inc. v. Cipriano Vigil, et al.**, Docket No. 7509, filed February 1, 1965, that the word "published" as used in Section 14-25-7, supra, is not synonymous with the word "printed". The Court further held that the intent of the legislature in using the word "published" was "to give notice to the public by insertion in a newspaper of general circulation within the boundaries of the municipal corporation, regardless of where the newspaper is physically printed."

We are advised that there is a newspaper of general circulation distributed, i.e., published, in the Village of Chama. Thus, under the doctrine enunciated in the Sun Company case, Chama Village ordinances do have to be published rather than simply being posted.

"Substantial compliance with provisions as to publication or notice of ordinances is essential, as a rule, to their enactment and validity." McQuillin, **Municipal Corporations**, § 16.76; **McClellan, v. Stuckey**, Ark., 120 S.W. 2d 155; **Wolfe v. Abbott**, Colo., 131 Pac. 386; **Davis v. City of Melbourne**, Fla., 170 So. 836. The reason for this rule is because residents of a municipality are entitled to know what the legislative body of the municipality has enacted.

With this in mind, we will answer your second question in two parts -- first as to ordinances enacted prior to the decision in the Sun Company case and second as to ordinances enacted after this decision.

It has always been the policy of the Village of Chama to post ordinances under the alternative procedure set forth in Section 14-25-7, supra. Presumably the inhabitants of the community have long been aware of this procedure and thus knew how to keep abreast of the actions of the governing body of the Village by examining the posted ordinances. We believe, therefore, that ordinances enacted and posted prior to the date the decision was rendered in the Sun Company case were presumptively valid after posting, which presumption has become conclusive. See **Ex Parte Porterfield**, Cal., 147 P. 2d 15; **Muir's Administrators v. Bardstown**, Ky., 87 S.W. 1096.

As to those ordinances enacted after the decision in the Sun Company case (February 1, 1965) and which are of the type required to be published, we would strongly suggest re-enactment and republication. Any defect in the publication of an ordinance is cured by its re-enactment and republication. 5 McQuillin, **Municipal Corporations**, § 16.93; **Muir's Administrators v. Bardstown**, Ky., 87 S.W. 1096.