

Opinion No. 69-73

July 7, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Ray Shollenbarger,
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TO: George R. Schmitt, City Attorney, City of Las Cruces, P.O. Box 760, Las Cruces,
New Mexico

QUESTIONS

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Does a municipality have the authority to enter into a Collective Bargaining Agreement with a labor organization covering public employees?

CONCLUSION

Under certain circumstances. See Analysis.

OPINION

{*113} ANALYSIS

In Attorney General Opinion No. 63-52, it was stated that in the absence of specific legislation authorizing public employees to enter into collective bargaining agreements, any agreement by a public employer to bargain or abdicate their continuing legislative discretion is invalid. In 1965 the Supreme Court of New Mexico decided the case of **International Bro. of E. Workers v. Town of Farmington**, 75 N.M. 393, 405 P. 2d 233 (1965) which held that the Town of Farmington had authority to enter into a collective bargaining agreement with a union representing employees engaged in the operation of a town owned public utility, when the town did not have any regulation governing the area covered by the collective bargaining agreement. The Court said that collective bargaining contracts, although not specifically mentioned, are within the language of the legislature recognizing and allowing for employment contracts between a municipality and its employees. In effect the Court held that there is implied legislative authority for a municipality to enter into a collective bargaining agreement with its employees.

However, our Supreme Court also held that "any agreement which conflicts with the regulatory power of the municipality under a civil service or merit system would constitute bargaining away of legislative discretion and be prohibited." Section 14-12-4, N.M.S.A., 1953 Compilation, authorizes municipalities to establish by ordinance a merit system for the "hiring, promotion, discharge, and general regulation of municipal employees" and if such a system is established there can be no collective bargaining agreement on those matters covered within the scope of the merit system. If a

municipality has enacted an effective ordinance establishing a merit system it cannot abdicate its continuing legislative discretion by entering into a collective bargaining agreement covering its employees.