

Opinion No. 71-124

December 21, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: The Honorable Eddie R. Barboa New Mexico State Senator 4025 Isleta Blvd., S.W. Albuquerque, N.M. 87105

QUESTIONS

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1. What statute allows a class A county and city to merge?
2. Does the law require a majority of the county and city voters to approve consolidation, or is a simple total majority sufficient?
3. How can consolidation be opposed?

CONCLUSIONS

1. Sections 14-15-1, et seq., N.M.S.A., 1953 Comp. and Article X, Section 4, New Mexico Constitution.
2. A majority in favor must be obtained in the city, a majority in favor must be obtained in the county and there must be a total majority in favor of consolidation.
3. See analysis.

OPINION

{*191} ANALYSIS

It is necessary first to examine Article X, Section 4 of the New Mexico Constitution, relative to combined citycounty government. Paragraph (a) thereof provides as follows:

"The legislature shall, **by general law**, provide for the formation of combined city and county municipal corporations, and for the manner of determining the territorial limits thereof, each of which shall be known as a 'city and county', and, when {*192} organized, shall contain a population of at least fifty thousand (50,000) inhabitants. No such city and county shall be formed **except by a majority vote of the qualified electors of the area proposed to be included therein**, and if the proposed area includes any area not within the existing limits of a city, **a majority of those electors living outside the city, voting separately shall be required**. Any such city and county shall be permitted to frame a charter for its own government, and amend the same, in

the manner provided by the legislature by general law for the formation and organization of such corporations." (Emphasis added.)

The general law enacted by the Legislature dealing with combined city county government is Section 14-15-1, et seq., 1953 Comp. In specific response to your question as to the necessary majority vote for consolidation, Section 14-15-2, **supra**, supplies the answer. Once the required initial steps toward a vote on consolidation have been accomplished, the ballot for a special election on the matter is to contain the following question (Section 14-15-2, **supra**):

"City and county consolidation: Shall the city of (here insert name of city) be consolidated with the remainder of the county of (here insert name of county in which the city is located) as a political subdivision and become a combined city and county government? YES NO"

The proposition to adopt a proposed city and county charter is also to be placed on the ballot as a separate measure on which to be voted. However, your questions go to the proposed consolidation itself rather than to the charter, so, for the sake of clarity, we discuss consolidation approval only.

In order for consolidation to be approved, there must be **three** majorities in favor thereof. The constitutional provision, already quoted, requires a majority vote of the qualified electors in the proposed consolidated area. In addition, Section 14-15-2, **supra**, requires a majority of the voters voting on the proposition in the city and a majority of the voters voting on the proposition in the county outside the city. "If a majority vote of either election unit is against the proposition of consolidation, the proposition shall not again be submitted to the voters of the combined municipal organization within two years of the date of such election." Section 14-15-2, **supra**. Accordingly a simple **total** majority vote within the city and the county is not sufficient.

You also ask, in effect, how consolidation may be opposed. Obviously it can be opposed by a vote on the issue itself. But, prior to the election even taking place, the city governing authority and the county governing authority must by ordinance or resolution "express their desire that the question of the formation of a combined city and county municipal corporation shall be submitted to the voters of the city and the county outside the city, in accordance with Article 10, Section 4 of the Constitution of New Mexico, at a special election called and held as hereinafter provided." Section 14-15-2, **supra**. Clearly then, there is to be no vote on consolidation unless and until each governing authority separately approves the submission of the question to the electorate in the combined area.

By: Oliver E. Payne

Deputy Attorney General