

Opinion No. 71-14

February 4, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Mr. Richard H. Wilson, City Manager City of Albuquerque Albuquerque, N.M.
87103,

QUESTIONS

PREFACE

It is not one of the functions of the Attorney General to furnish written opinions to municipalities or other political subdivisions. This office generally limits itself in this respect to **advice** when, as here, one or more municipalities or political subdivisions may be interested in our conclusions.

QUESTIONS

1. Is the Charter Revision Committee a properly constituted body for the purpose of proposing to the people of the City of Albuquerque, changes in Albuquerque governmental authority as authorized by the Municipal Home Rule Amendment (N.M. Const., Art. X, Sec. 6)?
2. Under the districting section of the above referred-to amendment, may the Charter Revision Committee propose to the City Commission for a vote of the people, a plan for electing from districts some or all of the members of the City Commissions?
3. Can the Charter Revision Committee, under the general power to write a home rule charter, provide a districting method?

CONCLUSIONS

1. Yes.
2. Yes.
3. See analysis.

OPINION

{*23} ANALYSIS

You have enclosed a copy of the resolution adopted by the Albuquerque City Commission which created a Charter Revision Committee. The answers to the

questions you have posed are found in Sections 14-4-1, et seq., N.M.S.A., 1953 Comp.; New Mexico Constitution, Article X, Section 6 and the present Albuquerque City Charter. The charter Revision Commission is duly constituted to recommend to the City Commission amendments to the present Charter. See Article X, Section 6 of the New Mexico Constitution, the so-called Municipal Home Rule Amendment, approved by the voters at the general election in November, 1970. The procedure for the adoption of a new Charter is set forth in Section 14-14-2, N.M.S.A., 1953 Comp. The procedure for amending a presently existing Charter is found in Section 14-14-14, N.M.S.A., 1953 Comp. and in Article 6 of the Albuquerque City Charter.

The Charter Revision Committee has been organized in accordance with the above cited Article of the Charter which states that:

"Amendments to this Charter may be proposed by members of the Commission or by a petition signed by fifteen per cent of the number of voters at the last preceding election. Not more than 60 days after the filing of the proposed amendments they shall be submitted to the electorate for adoption or rejection."

The above quoted Article of the Charter is a paraphrase of what the City is permitted to do under Section 14-14-14, N.M.S.A., **supra**. 2 McQuillen, **Municipal Corporations**. Section 10.12 (1966 rev'd. vol.) states that:

"The municipal corporation may adopt or employ devices, agencies, instrumentalities, or other means for {24} the purpose of carrying out powers expressly conferred on it, although the particular means adopted is not expressly authorized."

Section 14-13-12, N.M.S.A., 1953 Comp. provides that the City Commission shall perform all acts for the general welfare of the municipality and in **Hobbs v. Biswell**, 81 N.M. 778, 473 P.2d 917 (1970) it is stated as law that the power in Section 14-16-1(B), N.M.S.A., 1953 Comp., to adopt ordinances or resolutions for the general welfare, **is a separate and independent** power. Creation of the Charter Revision Committee by the City Commission is proper since the governing body is simply employing a reasonable device to carry out a specific power. The City Commission itself is not required to do the research and drafting of Charter amendments and may delegate this to a committee. The Committee as constituted may submit to the City Commission for referral to the people, amendments to the present Charter as provided for in Article 6 of that document.

A question left for consideration is whether or not the change of city government from the form in which it is presently organized to that as provided in the Home Rule Amendment can be accomplished by amendment as well as by the submission of an entirely new charter. It is the opinion of this Office that the form of government authorized by the Home Rule Amendment can be brought before the people of a municipality by amendment. A general revision of a charter may be accomplished by amendment as well as by adoption of a new document. The change of a city government from city council to city commission form was permitted to be made by

amendment in Oregon in the case of **State v. City of Portland**, 65 Ore. 273, 133 P. 62 and in Colorado in the case of **People v. Perkins**, 56 Colo. 14, 137 P. 55. These two cases make it quite clear that a change even in the basic form of government may be made by amendment.

In **Kelly v. Laing**, 259 Mich. 212, 221, 242 N.W. 891 (1932), the Court held in adopting the dissent in **Perkins, supra**. that:

"The reasoning of the dissenting opinion seems to us the better, **especially as applied to a case where the statute draws a distinction between revision and amendment as a method of altering a charter and confines each to its own sphere.**" (Emphasis supplied),

The **Kelly** cases went on to hold that the procedure adopted in that instance was invalid but the rationale of the case rested on the fact that the Michigan statute made a specific distinction between revision and amendment. In New Mexico, the statute does not distinguish between revision and amendment as a method of altering a charter. If a city does not have a charter, it must be adopted initially under Section 14-14-2, **supra**. If it has a charter and seeks to change it, it may do so under the Home Rule Amendment ". . . in the manner provided by law." In this case both Section 14-14-14, **supra**, and Article 6 of the Albuquerque City Charter provide as one allowable method of change of an existing charter, a proposal submitted by the governing body to the people.

This Office sees no reason why the change to home rule cannot be made by amendment as well as by adoption of a new charter. In both cases, it is the people of the municipality who will have the final say as to the adoption or rejection of the change. Whether they approve this change as an amendment or as a new charter makes little difference as a practical matter. The electorate's will on the subject will be effectuated in either case. If the charter were longer and more complicated, more amendments might be needed to change it; in that case the process of change might become too confusing and there would be a valid reason why the change should not be made by amendment.

It is also the opinion of this Office that the Charter Revision Committee could propose to the City Commission for referral to the people, a plan for electing from districts some or all the members of the City Commission. It is one of the proposals the Committee is directed to consider. Under the general authority of the City Commission to use committees as it desires, and to act in the interest of the general welfare, {*25} the City Commission may accept, reject, modify or refer back for further study any districting method recommended to it. Article X, Section 6 of the New Mexico Constitution gives the City Commission the authority to adopt a districting resolution and provides for referral of the resolution to the people.

Since this Office has concluded that the Charter Revision Committee is a proper body to propose amendments to the present Charter, districting may be a subject of a proposed amendment and the City Commission by resolution may submit the question of districting to a vote of the people.

By: Oliver E. Payne

Deputy Attorney General