

Opinion No. 71-50

April 1, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: The Honorable Bennie J. Aragon New Mexico State Representative 10310 Rafael, S.W. Albuquerque, N.M. 87105

QUESTIONS

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Is it proper to allow voters, who are considering the approval of a proposed city charter, a choice between several alternative provisions within the body of the charter they are voting to approve?

CONCLUSION

No.

OPINION

{*70} ANALYSIS

Subsection C of New Mexico Constitution, Article X, § 6 (The Home Rule Amendment, approved by the electorate in November, 1970) reads as follows:

"C. The registered qualified electors of a municipality may adopt, amend or repeal a charter **in the manner provided by law . . .**" Emphasis added.)

The "manner provided by law" is found in Sections 14-14-7 and 14-14-8, N.M.S.A., 1953 Comp., and reads as follows:

"14-14-7. **Special election on adoption of charter.** -- Within five [5] days after the filing with the clerk of the municipality of the charter provided for by sections 14-14-1 through 14-14-14 New Mexico Statutes Annotated, 1953 Compilation, and the charter being approved by a majority of the members elected to the governing body of the municipality at a regular or special meeting, the presiding officer of the governing body of the municipality shall by proclamation call a special election for the purpose of submitting to the electors of the municipality the question of whether or not the municipality shall adopt the charter prepared by the charter committee. The special election may be called and held at the same time and in conjunction with the regular election for municipal officers. Should the charter filed with the clerk of the municipality fail to be approved by the governing body of the municipality, the charter shall be returned to the chairman of the charter committee together with a letter of transmittal

stating the reason why the charter has been rejected by the governing body. The charter committee shall revise the charter in accordance with their instructions in the letter of transmittal and shall refile the same with the clerk of the municipality within [60] days after the chairman of the charter committee shall have had returned to him the rejected charter. If the charter is then approved, the election proclamation shall be issued, or if not approved, the charter shall be returned by the governing body to the charter committee. This procedure shall continue until a charter is presented and approved by the governing body of the municipality."

"14-14-8. **Qualifications of voters -- Ballots -- Conduct of election -- Effect of adoption.** -- All qualified electors residing within the municipality shall be qualified to vote at the special election held under sections 14-14-1 through 14-14-14 New Mexico Statutes Annotated, 1953 Compilation, and **the vote shall be by separate ballots, one of which shall be:**

'In favor of adoption of charter []' **and the other:**

'Against adoption of charter []' . . ." (Emphasis added.)

Section 14-14-8, **supra**, is couched in mandatory language and prescribes the form of the ballot to be used in a charter adoption election. The voters are given no alternatives except approval or disapproval {*71} of the charter as proposed. They may not, under the statute, be given any options other than approval or disapproval.

By: C. Emery Cuddy, Jr.

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