

## Opinion No. 71-64

May 5, 1971

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** Honorable Lenton Malry State Representative 2900 Hyder S.E. Albuquerque, N.M. 87106

### QUESTIONS

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Can the City of Albuquerque enact an ordinance creating a Human Rights Commission with powers and duties directed at eliminating discrimination in employment, housing and public accommodations?

#### CONCLUSION

Yes.

### OPINION

#### {\*92} ANALYSIS

Except as limited by Federal and State Constitutions, municipalities are subject to the authority of the legislature (McQuillin, **Municipal Corporations**, Section 4.03). To ascertain the extent of the authority delegated to municipalities we must look first at the New Mexico Constitution, then at the relevant legislative enactments.

Article X, Section 4(b) of the New Mexico Constitution states that "Every such city and county shall have and enjoy all rights, powers and privileges asserted in its charter not inconsistent with its general laws . . ." This broad grant of powers was augmented in November of 1970 by the passage of the "Home Rule Amendment" (Art. X, Sec. 6). This amendment states, in Section 1 D, that "A municipality which adopts a charter may exercise all legislative powers and perform all functions not expressly denied by general law or charter." Section 1 E goes on to state "The purpose of this section is to provide for maximum local self-government. A liberal construction shall be given to the powers of municipalities."

{\*93} The Legislature of New Mexico has authorized municipalities to exercise certain powers related to human rights. Sections 14-17-1(F) and (G), N.M.S.A., 1953 Comp., grant a general "police power" to municipalities. Section 14-16-1(B), N.M.S.A., 1953 Comp., the "general welfare clause", gives municipalities the power to adopt ordinances consistent with the laws of New Mexico "providing for the safety, preserving the health,

promoting the prosperity, improving the morals, order, comfort and convenience of the municipality and its inhabitants."

These statutes must be juxtaposed with the 1969 "Human Rights Act" (Sections 4-33-1 to 4-33-13, N.M.S.A., 1953 Comp.), and the question raised whether this later Act preempts whatever delegation of authority in the area of human rights there was under the "police power" and "general welfare" clauses. In **Mitchell v. City of Roswell**, 45 N.M. 92, 111 P.2d 41 (1941), the New Mexico Supreme Court held that a subsequent legislative grant of power to the State Board of Health did not repeal by implication the powers granted to municipalities under the "police power" and "general welfare" statutes. In a more recent case, **City of Hobbs v. Biswell**, 81 N.M. 778, 473 P.2d 917 (1970), the Court of Appeals held that a city ordinance may duplicate or complement statutory regulations and that such an ordinance was not invalid even though it imposed stricter requirements than did the statute. We conclude, then, that the passage of the 1969 "Human Rights Act" did not remove the authority municipalities already possessed, by virtue of the New Mexico Constitution and the legislative enactments mentioned above, in the realm of human rights.

The next question that must be raised is whether such an ordinance is authorized by the Albuquerque City Charter. A municipality's charter defines and limits the objects and powers with which municipal authorities are entrusted (McQuillin, **op. cit.**, Section 9.01). Article I of the Albuquerque Charter states that the municipal corporation "shall possess all powers granted under the municipal corporation acts and such other powers as are consistent with the constitution of the State of New Mexico." Article IV, Section 7 says "It shall be the duty of the commission to pass all ordinances and other measures conducive to the welfare of the city . . . and to do and perform all acts required for the general welfare of the city." We also note that the City Charter is now under revision and that one of the proposed revisions makes it the duty of the City Council to provide for the protection of human rights.

There are no New Mexico cases directly on the question of a municipality's power to legislate in the area of civil rights. However, two Albuquerque ordinances in the area of civil rights have survived the test of time. The first, Ordinance No. 768, adopted February 12, 1952, prohibits racial segregation in public accommodations. The second, Ordinance No. 2358, adopted June 18, 1963, prohibits discrimination in housing.

In other jurisdictions there is a split of authority. Some states hold that a municipality does not have this power. **Midwest Employers Council v. Omaha**, 177 Neb. 877, 131 N.W.2d 609, and **Nance v. Mayflower Tavern**, 106 Utah 517, 150 P.2d 773. The trend, however, is to interpret municipal powers more broadly and to uphold ordinances dealing with civil rights. **Marshall v. Kansas City**, Mo. 355 S.W.2d 877, 93 A.L.R.2d 1012; **Porter v. Oberlin**, 3 Ohio App. 2d 158, 209 N.E.2d 629; **Commonwealth v. Beasy**, Ky. 386 S.W.2d 444; **District of Columbia v. John R. Thompson Co., Inc.**, 346 U.S. 100, 73 S. Ct. 1007, 97 L. Ed. 1480. The **Marshall** and **Porter** decisions are based in part on home rule provisions similar to that now contained in the New Mexico Constitution.

Concluding the analysis, we feel that the powers granted the Albuquerque municipal corporation by its current charter, as interpreted in the light of the "Home Rule Amendment," are sufficiently broad to authorize an ordinance such as the one proposed. (If the above-mentioned proposed charter revision is adopted, whatever doubts remain on this score will be removed). The legislative enactments cited above do not countermand this.

{\*94} Obviously, the question of coordination with the Human Rights Act and the State Human Rights Commission is essential. Whatever ordinance is passed cannot lower or be inconsistent with the state standards that have been set for human rights in Sections 4-33-1 to 4-33-13, N.M.S.A., 1953 Comp., McQuillin, **op. cit.** Section 24.54. The mechanisms of coordination between the two bodies will have to be spelled out carefully but are beyond the scope of this opinion.