

Opinion No. 79-24

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OPINION OF: Jeff Bingaman, Attorney General

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TO: Mr. Richard H. Folmar, Assistant Director, New Mexico Legislative Council, 334 State Capitol, Santa Fe, New Mexico 87503

MUNICIPALITIES

The authority of a city council to reject a proposed city charter pursuant to Section 3-15-19 NMSA 1978 is consistent with Article X, Section 6 of the New Mexico Constitution.

QUESTIONS

Does the authority of a city council to reject a proposed city charter pursuant to Section 3-15-9 NMSA 1978 comply with the provisions of Article X, Section 6 of the New Mexico Constitution?

CONCLUSIONS

Yes.

ANALYSIS

Ordinarily, municipalities are creations of the legislature and may only exercise those powers as are specifically defined by law. See, e.g., **Sanchez v. City of Santa Fe**, 82 N.M. 322, 481 P.2d 401 (1971). The home rule amendment to the New Mexico Constitution, Article X, Section 6, however, permits a municipality to adopt a charter for the management of its own affairs without legislative direction. A home rule charter adopted pursuant to constitutional authority is an organic law; in effect, a transfer to the municipality of part of the state legislative power. See McQuillin, **Municipal Corporations**, (2nd ed.). Specifically, Subsection D of Article X, Section 6 provides that a home rule municipality "may exercise all legislative powers and perform all functions not expressly denied by general law."

Nevertheless, these home rule powers do not attach with the submission of a proposed charter and, at that stage, legislative direction still controls. Subsection C of Article X, Section 6 provides that home rule charters may be adopted "in the manner provided by law." Section 3-15-2 NMSA 1978 states that:

"The qualified electors of a municipality who wish to be governed pursuant to Article 10, Section 6 of the constitution of New Mexico may adopt, amend or repeal a charter pursuant to the Municipal Charter Act [3-15-1 to 3-15-16 NMSA 1978].

Thus, although a proposal for a home rule charter is initiated by petition, see Section 3-15-4, **supra**, the rights of such petitioners are subject to the provisions of the Municipal Charter Act. The constitution directs those who wish to adopt a home rule charter to follow the procedure provided by law and that law is controlling. See Opinion of the Attorney General No. 71-50, dated April 1, 1971.

Section 3-15-9 of the Municipal Charter Act provides in part, that:

"Should the charter filed with the clerk of the municipality fail to be approved by the governing body of {*58} 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 the clerk of the municipality within sixty 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."

Approval of the proposed charter by the governing body of the municipality is thus a necessary condition to submitting the proposed charter to the electorate for adoption. Rejection of a proposed charter by a city council pursuant to Section 3-15-9, **supra**, is, accordingly, consistent with Article X, Section 6.

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