

Opinion No. 87-81

December 30, 1987

OPINION OF: HAL STRATTON, Attorney General

BY: Scott D. Spencer, Assistant Attorney General

TO: The Honorable Ben D. Altamirano, State Senator, 1123 Santa Rita Street, Silver City, New Mexico 88061

QUESTIONS

What is the proper procedure to amend the charter of the City of Silver City?

CONCLUSIONS

See analysis.

ANALYSIS

A municipality's charter may be amended only as authorized by the legislature. *City of La Grande v. Municipal Court of La Grande*, 120 Or. 109, 251 P. 308 (1926); *May v. City of Laramie*, 58 Wyo. 240, 131 P.2d 300 (1942). Pursuant to Section 3-15-16 of the Municipal Charter Act, Sections 3-15-1 to 3-15-16 NMSA 1978, the legislature has authorized the amendment of charters adopted under the Act and charters of home-rule municipalities adopted under the provisions of Article X, Section 6 of the Constitution of New Mexico. Silver City's charter was adopted pursuant to chapter 38 of the 1978 New Mexico Territory Session Laws and not the Municipal Charter Act. We understand that Silver City currently is not a home-rule municipality. There therefore is no legislative grant of authority for Silver City to amend its charter. It must adopt a new charter.

The Municipal Charter Act governs the adoption of municipal charters. Specifically, Sections 3-15-4 and 3-15-5 set forth the manner in which a municipality may adopt a charter. Section 3-15-4 provides:

Upon petition signed by five percent of the qualified electors of the municipality, the presiding officer of the governing body of the municipality shall by proclamation submit to the qualified electors of the municipality the question of adopting a charter for the municipality under the Municipal Charter Act [3-15-1 to 3-15-16 NMSA 1978], at a special election to be held at a specified time, and within sixty days after the charter provided for in Section 3-15-5 NMSA 1978 has been prepared and filed with the clerk of the municipality. If the charter is not adopted at the special election, the question of adopting a charter under the Municipal Charter Act shall not be resubmitted to the voters of the municipality for two years thereafter. No elector who has signed the

petition shall be permitted to withdraw his name after the petition has been filed with the clerk of the municipality except where his signature has been procured by fraud.

Section 3-15-5 provides:

Within five days after the filing of the petition, the presiding officer of the governing body shall appoint a charter commission or the governing body of a municipality may appoint a charter commission upon its own initiative at any time. The charter commission shall consist of not less than seven members, no more than a simple majority shall belong to the same political party. The charter commission shall prepare a charter providing for the government of the municipality and shall complete the proposed charter and file it with the clerk of the municipality within one hundred eighty days from the date of its appointment. The commission shall select its own chairman.

There are two statutory methods for adopting a charter. If five percent of the electorate petitions the governing body for a new charter, the governing body must appoint a commission to draft one. Alternatively, the government body on its own initiative may appoint a commission. In either event, the proposed charter will be the subject of a special election.

We are therefore of the opinion that the legislature has not authorized Silver City to amend its existing charter. Pursuant to the Municipal Charter Act, however, the Silver City may adopt a new charter.

ATTORNEY GENERAL

HAL STRATTON Attorney General