

## Opinion No. 13-1099

September 4, 1913

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. R. N. Williams, Texico, New Mexico.

### VILLAGE MARSHAL.

When an incorporated village can dispense with a marshal.

### OPINION

{\*273} I have just received your letter of the 28th ult. The letter has been delayed partly because it does not appear to have been mailed until September 2, and, as it was addressed to me at Albuquerque, there was another day's delay in its being forwarded to Santa Fe.

You ask whether it is within the power of the council of an incorporated village to abolish the office of marshal. The answer to this may depend upon when the village was incorporated. If it was incorporated under Chapter 117 of the Laws of 1909, which became a law on March 18, 1909, I incline to the opinion that the board of trustees can dispense with a marshal. Section 6 of that act provides that the board of trustees of an incorporated village shall have power to provide, by ordinance, for the election of a village marshal and other officers, to prescribe their duties and fees and compensation. You will see that this merely gives the village board authority to provide for a marshal and, where a board has passed such an ordinance, there is nothing to prevent a repeal of that ordinance. This act is, however, amended by Chapter 64 of the Laws of 1913, which provides that the town marshals of incorporated towns shall be appointed by the mayor with the advice and consent of the board of trustees. This does not, however, appear to make it compulsory that there should be such an officer, when taken in connection with the previous statute merely authorizing villages to provide for a marshal by ordinance, there being nothing in the last statute clearly to indicate a legislative intent that there must be a marshal.

If your village was incorporated prior to the passage of the act of 1909, your question is even less easily answered than if it were incorporated later. Under the act of 1891, which re-appears in the Compiled Laws of 1897, beginning with Section 2476, it was distinctly provided in Section 5, which in Section 2481 of the Compiled Laws, that at the first election there should be elected a town marshal and a board of trustees. At that election at least a marshal was positively required, but after the first election Section 2474 of the Compiled Laws would seem to be applicable and that section positively required the election of a marshal at the regular election of officers of any incorporated town. As to this class of towns, however, by Chapter 14 of the Laws of 1899, it was

provided that the town marshals should be appointed by the boards of trustees, but this still left undisturbed the legislative intent that there must be a marshal.

This act of 1899 was specifically repealed by Section 16 of Chapter 117 of the Laws of 1909, but this repeal was amended by Chapter 67 of the Laws of 1912, so that the repeal should not affect towns or villages incorporated prior to the passage of the act of 1909. These considerations lead to the conclusion that as to towns and villages {\*274} incorporated prior to 1909, there must be a marshal appointed by the board of trustees.

It would be desirable, if possible, to avoid any such difference between villages incorporated under the act of 1909 and those incorporated prior to that time, but I am unable to see any way of so reconciling these varying statutory provisions as to accomplish that result.