

Opinion No. 14-1228

May 12, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Mr. W. G. Robertson, Columbus, New Mexico.

DISINCORPORATION OF VILLAGE.

Nothing in the law providing for the disincorporation of villages incorporated under Chapter 117, Laws 1909.

OPINION

{*90} Your letter of the 8th inst. was received yesterday, and I find the question which you ask not at all free from difficulty. You say that the village of Columbus has been voted dry, and you desire our opinion as to whether the people can, by means of a petition to the county commissioners, obtain the disincorporation of the village and thereafter hold another local option election, which would necessarily be under Chapter 78 of the Laws of 1913, the previous village election having been held under Chapter 75 of the Laws of the same year.

This presents two matters for consideration, first, as to whether your village can disincorporate, and second, whether another local option election could be held covering the same territory included within the corporate limits of the village.

It is well settled that any municipal corporation can be dissolved only in some manner prescribed by law. The inhabitants are powerless to dissolve it unless authorized by law so to do, -- just as powerless as they would be to create a corporation unless authorized by law to do so. You say that your village was incorporated under the statute of 1909, which is Chapter 117 of the laws of that year, as amended by Chapter 27 of the Laws of 1912, that amendment being only as to the required population. Nowhere in the act of 1909 is there any provision made for disincorporation of villages created under it. If there is any authority to disincorporate, it must be found elsewhere in the statutes.

As far as I am aware the only provisions on the subject of disincorporation are those which re-appear in Sections 2503 to 2512 of the Compiled Laws of 1897, those sections being originally portions of Chapter 39 of the Laws of 1884, with some amendments by Chapter 81 of the Laws of 1889. Those amendments were so made as to become a part of the original act of 1884, and Section 2503 is {*91} the section which contains authority for the disincorporation, the other sections being as to matters of detail about the election and subsequent proceedings. Section 2503 is as follows:

"When one-fourth of the legal voters of any city or incorporated town in the territory, who may have voted in the last regular annual election held in such city or town, previous to

the presenting of the petition hereinafter mentioned, whether such city or town be incorporated under this act or under any previous act, shall petition the board of county commissioners of the county wherein such corporation is situate for the discontinuance of the same, the said board shall order an election of the legal voters in such city or town to be held, and shall cause to be published for at least thirty days, a notice stating that the question of discontinuing such corporation will be submitted at said election to the legal voters of the same, and shall fix therein the day of holding the election, which shall not be less than thirty, nor more than sixty days after the date of such order."

The first noticeable thing is that this section refers to "any city or incorporated town," and some persons might attempt to argue that this would not include an incorporated village such as is contemplated by the act of 1909 under which your village was incorporated, but I would attach no importance to such an argument, as I believe any court would hold that the word "town" should be held to include a village, especially as the language used in Sections 2469, 2470, 2476, 2478, 2479, 2481, 2482, and perhaps others, seem to treat towns and villages as synonymous, while other sections occurring in connection with those just enumerated speak only of towns but clearly intend to include what may be called villages.

A more important matter, however, is suggested by the clause in Section 2503, "whether such city or town be incorporated under this act or under any previous act." If that language were not used in the section I am clear that it would be applicable to your village organized under a later act, but there is some room to argue that the legislative intent was to limit the power of disincorporation to municipalities then in existence, or which might be organized under the act of which that section was a part, and the failure of the legislature to make any like provisions with regard to villages incorporated as yours has been, or to declare that earlier statutes on such subjects would be applicable to them would tend to support that idea, especially in view of the well settled rule already mentioned that such corporations can not be dissolved unless the dissolution is distinctly authorized by law. I can imagine that strong argument might be made as to the legislative intent in favor of the power of dissolution, on the ground that the legislature could not have intended to treat municipalities differently whether organized under one act or another, but I greatly fear that the courts would not decide in favor of such an argument.

Passing from this question, however, to the consideration of the other, it would seem that if the village should go out of existence the effect of the local option election would be entirely done away with, there being no provision in the statutes for such a contingency. {*92} By the last paragraph of Section 4 of Chapter 75 of the Laws of 1913, under which your election must have been held, it is required that if a majority of the votes cast are in favor of prohibition, the municipality shall forthwith pass ordinances to carry such provisions into effect. This would seem to make the effectiveness of prohibition dependent upon ordinances of the village, and if the village goes out of existence the ordinances would perish with it, and the prohibition as to liquor traffic within the limits of the municipality could no longer be effective. I can not see that under

these circumstances there could be any sound objection to the holding of another election under Chapter 78 of the Laws of 1913.