

Opinion No. 46-4956

October 4, 1946

BY: C. C. McCULLOH, Attorney General

TO: Richard F. Rowley Assistant District Attorney Ninth Judicial District Clovis, New Mexico

{*276} This is to acknowledge receipt of your letter of September 30, 1946, in which you request the opinion of this office concerning a possible conflict between Sections 14-1106 and 14-1124 of the New Mexico Statutes, 1941 Annotation.

Section 14-1124 of the 1941 Compilation, which was passed in 1921, provides as follows:

{*277} "Vacancies in the commission shall be filled by choice of the remaining commissioners for the period intervening between the occurrence of the vacancy and the next regular election; Provided, that if such period be less than six (6) months, no such temporary appointment shall be made."

Section 14-1106 of the 1941 Compilation, which was passed in 1933, provides as follows:

"The governing body of any city now or hereafter organized under the provisions of chapter 21, Session Laws of 1921 (this article), providing for commission government, shall district the city into five (5) districts, each district to be compact in area and equal in population as nearly as possible, and a city commissioner shall be elected from each district but shall be voted on at large; **each commissioner** must be the owner of real estate in the city and **must reside in the district from which elected; in case of removal from his district by any commissioner, a vacancy in such district shall thereupon be created ipso facto, which shall be filled by appointment by the remaining members of the commission.** In case additional territory shall be annexed to any city so organized, the same shall be annexed to the district or districts contiguous thereto. Any city may be redistricted by the commissioners at any time the needs of the city may require, or at any time upon petition of fifteen (15) per cent of the voters of the city, calculated upon the total vote cast for city commissioner or alderman at the last preceding general city election."

In accordance with the principle that the last expression of the Legislative will is the law in case of conflicting provisions in different statutes, the last in point of time will prevail. However, this principle is to be resorted to only when there is clearly an irreconcilable conflict. (59 C. J., page 999, 1000).

From a close study of the above statutes and of the rules of statutory construction, I do not believe that an irreconcilable conflict exists between Sections 14-1106 and 14-1124

of the 1941 Compilation. Section 14-1106 merely sets out an additional cause of vacancy in a city commission, namely, removal from the district. The section is silent as to any period of time within which the vacancy must be filled. In order to arrive at the time within which the vacancy may or may not be filled, reference must be made to Section 14-1124.

In view of the above, I am of the opinion that any vacancy in a city commission for cities of 3,000 to 10,000 in population must be filled in accordance with and pursuant to Section 14-1124 of the 1941 Compilation.

By WILLIAM R. FEDERICI,

Asst. Atty. General