

## Opinion No. 52-5499

February 21, 1952

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** Hon. E. E. Chavez Assistant District Attorney Third Judicial District Las Cruces, New Mexico

{\*213} This is in reply to your three questions as set forth in your letter of February 12, 1952.

1. Is it mandatory that the village clerk be elected, or may such office of village clerk be filled by appointment by the mayor with approval of Board of Trustees?

Sec. 14-1509, N.M.S.A., 1941 Comp., provides that the corporate authority of any village recognized and incorporated under Secs. 14-401 and 14-403, shall be vested in the Board of Trustees consisting of a mayor, four other trustees and a clerk, {\*214} who shall be qualified voters residing in the corporate limits of such village. This statute is mandatory and has not been amended.

Sec. 14-1508 further provides that the officers elected shall qualify and enter upon the duties of their respective offices on the first Monday of May succeeding their election.

It is my opinion, therefore, that it is mandatory that the village clerk be elected and not appointed.

2. Is it within the power of the Board of Trustees to determine by ordinance whether the office of village clerk is an elective or appointive office?

It is not within the power of the Board of Trustees to determine by ordinance whether the office of village clerk be an elective or appointive office as Sec. 14-1508, as above quoted, makes it mandatory that the office of clerk be an elective office.

3. May the office of village clerk and village treasurer be lawfully combined; and, if so, how will the combination of the two offices affect the question of whether the office is elective or appointive?

Sec. 14-1508, N.M.S.A., 1942 Comp., which has not been amended, makes it mandatory that the clerk be elected. Sec. 14-209, N.M.S.A., provides, in part, that "such village shall thereafter have and possess all powers and privileges by law granted to incorporated towns". This, in my opinion, would apply to the Village of Ruidoso.

Under Sec. 14-1505, N.M.S.A., the Board of Trustees of any incorporated town shall have the power to provide by ordinance for the election of a treasurer and such

subordinate officers as they may deem necessary for the good government of the corporation, etc.

It is my opinion that the mayor and aldermen of the Village of Ruidoso may, by proper resolution, pass an ordinance for the election of a treasurer and at the same time determine whether or not to combine the offices of treasurer and clerk. They are not prevented from doing this by Sec. 14-1508, neither would they be violating Sec. 14-1508. A number of villages and towns over the State have combined the office of clerk and treasurer.

Trusting that this fully answers your inquiry, I remain