Opinion No. 55-6187

June 10, 1955

BY: RICHARD H. ROBINSON, Attorney General

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

Replying to your letters of March 31 and May 10 in which you request an opinion concerning the effect of House Bill 130, please be advised that we come to the following conclusion:

It is our understanding that the questions presented by your letters are as follows:

1. Can the Legislature enact a law which changes some of the incidents of the commission-manager form of government of said city by reason of the fact that at a past election this said city chose a commission-manager form of government?

2. Does House Bill 130 apply to cities who have adopted the commission-manager form of government under Chapter 21, Laws of 1921, but now have increased in population to more than 10,000?

3. Does House Bill 130, in effect, also amend Chapter 121, Laws of 1919, so that such notice should be given in the title to House Bill 130?

4. Is Section (B) of House Bill 130 beyond the scope of the title of the Act and also beyond the scope of the title of Chapter 21, Laws of 1921, which it purports to amend?

Taking these questions in order, it is our opinion that the Legislature does have the authority to change the form of local government if it so chooses. Since a municipality is merely a delegation by the State of some of its power to a local area, we feel that the Legislature certainly has the authority to change the form of government, if it so chooses, of the municipal organizations. There are no constitutional provisions which would forbid the Legislature from taking such step. See McQuillin, Municipal Corporations, 3rd Edition, Vol. 2, Sec. 4.03 and 4.04, Page 12 et seq.

With reference to question 2, we feel that House Bill 130 could properly apply to cities which have been organized under Chapter 21, Laws of 1921, but have now passed the 10,000 population. We come to this conclusion because of the inherent power in the Legislature to alter or change the form of the municipal government.

With reference to questions 3 and 4, we feel that Section (B) of House Bill 130 does not, in effect, amend Chapter 121, Laws of 1919, beyond the scope of the title. Chapter 121, Laws of 1919, provides for the commission-manager type of government for a municipality whose population is 10,000 or more by the last federal census when such city by election agreed to be governed by this law, and Section (B) of House Bill 130

provides that when a city organized under Chapter 21, Laws of 1921, shall have a population of 10,000 or more, according to the last federal census, said municipality is then to be governed by commission-manager form of government as cities in the class of cities of 10,000 or more.

The title to House Bill 130 reads as follows:

"Relating to the governing of cities between 3,000 and 10,000 population; amending Section 14-11-1, New Mexico Statutes Annotated, 1953 Compilation (being Laws 1921, Chapter 21, Section 1)."

Chapter 21, Laws of 1921, is entitled:

"An act to provide for the government by a commission of all cities in New Mexico, which now have, or which may hereafter have, a population of more than three thousand people and less than ten thousand people according to the last federal census or any such census which may hereafter be taken, when such cities, by an election, adopt the provisions of this act; to provide for the selection and election of commissioners and their terms of office; to fix their powers, duties and compensation; and to otherwise provide for the creation, conduct and maintenance of the commission-manager form of government and to repeal all laws and parts of laws in conflict with the provisions of this act."

Section (B) of House Bill 130 reads as follows:

"When any city, the voters of which shall have elected to be governed according to the terms of this act, shall have a population of 10,000 or more people, according to the latest federal census, said city shall be governed by the commission-manager form of government as cities in the class of cities of 10,000 or more."

We are aware that perhaps a close constitutional question is presented in the situation presented by House Bill 130. However, due to the reluctance of the courts to declare an act unconstitutional because of a variance between the title and the sections in the act we feel that a construction can be made concerning the said Section (B) so as to make Section (B) compatible with the title of the act and also the title to Chapter 21, Laws of 1921. The said Section (B) actually merely provides what will happen to a city in the class of 3,000 to 10,000 when it experiences a growth so that it is more than 10,000, and this being the case, we do not feel that we should state that this section is not germane to the title to the act, and as has been repeatedly pointed out by the courts of New Mexico, each case must rest upon its own fact situation. Albuquerque Bus Company v. Everly, 53 N.M. 460, and the cases therein cited. It would be our suggestion that a judicial determination of this question should be made.

By Paul L. Billhymer

Assistant Attorney General