

Opinion No. 57-24

February 8, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,
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TO: Mr. Paul W. Robinson, District Attorney, Second Judicial District, Second Floor
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QUESTIONS

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1. With reference to Article X, § 4 (b), relating to city and county consolidation, what is an appointive officer, and what is a term of office?
2. Can the state authorize by legislation, abolition of county officers existing and the transfer of their functions to other offices, and provide for the appointment rather than election of officials to carry on the duty of these officers?

CONCLUSIONS

1. (a) An officer so designated in the city-county charter. (b) That designated by the city-county charter, or in the absence thereof, as provided by existing law for city and county offices.
2. Yes.

OPINION

ANALYSIS

The questions above stated both arise from Article X, § (b), of the State Constitution, which provides generally for the combining of local municipal and county governments for the purpose of consolidating authority in a common governing body. The considered provision provides:

"(b) Every such charter shall designate the respective officers of such city and county **who shall perform the duties imposed by law upon county officers** and shall make provisions for the payment of existing city and county indebtedness as hereinafter required. The officers of a city and county, their compensation, qualifications, term of office and manner of election or appointment, **shall be as provided for in its charter, subject to general laws and applicable constitutional provisions.** The salary of any elective or appointive officer of **a city and county** shall not be changed after his election or appointment or during his term of office; nor shall the the term of any such

officer be extended beyond the period for which he is elected or appointed. Every such city and county shall have and enjoy all rights, powers and privileges asserted in its charter not inconsistent with its general laws, and, in addition thereto, such rights, powers, and privileges as may be granted to it, or possessed and enjoyed by cities and counties of like population separately organized."

(Underscore provided)

In arriving at a definitive response to the first question put, it will be necessary, first, to determine the means of ascension to office of the individual members of the provided for legislative or local governing body of the city-county. Section 14-12-3, N.M.S.A., 1953, dealing with the subject of city-county corporations, provides, among other things, that,

". . . The **legislative body of said city** and the **board of county commissioners** shall be the first legislative authority of the combined municipal organization and they shall continue in office until the terms for which each was elected expires and no successor shall be elected or appointed under the combined municipal organization charter until the number of said body falls below the number provided in said **city and county charter.**" (Underscore provided)

and by § 14-15-2, N.M.S.A., 1953, it is declared that:

"The qualified electors of cities shall on the first Tuesday of April of each even number year **elect** one (1) mayor for the term or two (2) years, and shall **elect** one (1) alderman from each ward, who shall hold their offices for the period of four (4) years."

(Underscore provided)

and, finally, by §§ 15-37-1 and 15-37-4, N.M.S.A., 1953, respectively:

"The power of a county as a body politic and corporate shall be exercised by a board of county commissioners."

"At each general election in New Mexico there shall be elected three (3) county commissioners in each county."

With reference to the sections last cited, 14-12-3, 14-15-2, 15-37-1 and 15-37-4, N.M.S.A., 1953, it becomes apparent that the first legislative body of a newly combined municipal organization shall be elective. Since no other authority is provided for a popularly elected local government in the consolidated body politic, it may be concluded that subsequent members of the local governing body, must of necessity, be elected to office. The aforesaid governing body is the only one vested with any authority by virtue of the specific legislative delegation. All other city-county officers may be elected or appointed as shall be designated in the charter. Likewise, the terms of all offices, designated as appointive, shall be specified in the considered city-county charter. § 14-

12-4, N.M.S.A., 1953. Specifically then, an appointive officer in a city-county municipal corporation shall be that person performing duties imposed by law upon county officers, i.e., assessor, clerk, sheriff, surveyor and treasurer, and whose offices have been designated in the city-county charter as appointive.

By the provisions of § 14-12-7, N.M.S.A., 1953:

"In the event of a city and county consolidation, any county officer holding office at the time the charter for the city and county become effective shall continue as an officer for his unexpired term and may exercise such functions or duties for the combined municipal organization as the legislative authority thereof determines, and after expiration of his term **said county office shall terminate**, except as provided herein."
(Underscore provided)

Considering the fact that county offices terminate at the running of an elective term, supra, and by the terms of § 14-13-24, N.M.S.A., 1953,

"If a county-city form of government is established pursuant to this act, the charter or any amendment thereto proposing such form of government may provide that municipal officers shall be identical with county officers of the county in which said county-city form of government may be established, and such municipal officers shall be and hereby are clothed with the powers, duties, obligations and authority now or hereafter vested in said county officers, in addition to the powers, duties, obligations and authority vested in them by said charter or any amendment thereto."

then it may be concluded that a term under the provisions of Article X, § 4 (b), supra, will and may be identical to those provided otherwise for county officials.

In light of the foregoing, the second query above stated may be answered in the affirmative. Certainly by the provisions of § (a) of the herein considered Article, there is constitutional contemplation for substituting a consolidation government organization for that otherwise provided. In discussing municipal corporations and their purpose, Charles Tooke writes in 16 Minn. L. Rev. 344:

"Having been called into existence to meet the peculiar needs of the more populous localities, it is generally superimposed upon the county and town, but in many instances be charged with the same administrative duties, either concurrently with or to the exclusion of either of these subordinate state agencies."

And further in 62 C.J.S. 898:

"Where cities are combined with their respective counties for governmental purposes, it may be provided by statute that certain named city offices shall be regarded as county offices, and shall have the powers and duties thereof as if they had been elected and appointed as such, . . ."

It is hoped that this opinion sufficiently answers your questions.