

Opinion No. 58-150

July 22, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Howard M. Rosenthal,
Assistant Attorney General

TO: Mr. Manuel Garcia, Jr., Assistant District Attorney, Eighth Judicial District, Raton,
New Mexico

QUESTION

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Is the City Commission of Raton required to publish a financial statement monthly in accordance with the provisions of § 14-11-23 or has this section been impliedly repealed by the several subsequent legislations culminating in the present § 5-6-7?

CONCLUSION

§ 5-6-7 controls publication of receipts and disbursements, and such is therefore discretionary.

OPINION

ANALYSIS

May we express our appreciation to you for the legal references and analysis contained in your letter of inquiry. Such cooperation makes for expeditious handling.

§ 14-11-23 was adopted in 1933 and considerable legislation along the same lines has been passed since that date. While this office has always been extremely reluctant to effect legislative repeals by implication this instance would appear to be one in which this procedure is necessary. Further, this office must take cognizance of the fact that for many years the various boards, commissions, councils, trustees, etc., have failed to conform to the requirements of § 14-11-23 and that the Legislature has tacitly or otherwise concurred in such statutory avoidance by a considerable amount of statutory modification and amendment.

We here repeat the legislative history of § 5-6-7 as it is recited in your letter of inquiry.

In 1939, six years after the passage of § 14-11-23, the Legislature passed Chapter 220, of such laws, and repeated the strict requirement of publication upon boards and councils, etc. Contained therein was the pronouncement that failure to comply with the publication provisions of Chapter 220 should be ground for removal from office of respective controlling groups. Eight years thereafter, in 1947, Chapter 189, by its terms

made such publication permissive rather than mandatory. A partial quotation from that chapter reads:

"on or before the 10th day of each month there may be published . . . by the council, commission, or trustees of every city, town or village in this state, and by every board of education in this state . . . a summary of expenditures . . . and a summary of all receipts."

In 1953, Chapter 84 again used the language contained in Chapter 189, Laws of 1947 and further emphasized the discretionary quality of the publication by stating:

"provided ,however, that the publication herein mentioned shall be made only at the discretion of the council commission, or trustees of every city, town or village, and board of education in this state if they shall deem said publication necessary in the public interest."

Also, and of equal importance is the fact that this same legislation specifically repealed the original section of the 1939 act which had provided for removal from office for violation thereof.

By virtue of the above legislative history and the diametrically opposed provisions of § 14-11-23, this office is of the opinion that reconciliation is impossible and that repeal by implication must result. Therefore, our opinion to the effect that this matter is covered by § 5-6-7.