

Opinion No. 58-157

July 25, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,
Assistant Attorney General

TO: Honorable Arsenio J. Martinez, State Representative, P. O. Box 871, Espanola,
New Mexico

QUESTION

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Assuming that a village chief of police qualified for his position under an ordinance now repealed, must the said chief of police be appointed under a new ordinance which prescribes certain additional requirements for holding the position, and providing for the method of appointment under the new ordinance?

CONCLUSION

Yes.

OPINION

ANALYSIS

This office is informed by virtue of the opinion request that the Chief of Police of Espanola, New Mexico, was employed on August 16 1956, by appointment of the Mayor and a majority vote of the Board of Trustees of the said village. At that time, Village Ordinance No. 117 was in effect and apparently the Chief of Police was hired in accordance with the said ordinance.

On October 2, 1957, the new Police Ordinance No. 130 was passed and adopted by the village and No. 117, referred to above, was repealed. Section 11-f of Village Ordinance No. 130 states as follows:

"f. Prior to the first regular meeting of the Village Council following the passage, adoption and approval of the Ordinance, the police committee of the Village Council shall consider all applications for Chief of Police, and make its recommendations to the Mayor, who shall then designate and appoint a qualified person as in this Ordinance provided, as Chief of Police, subject to confirmation by the Village Council."

The foregoing section clearly indicates that upon adoption of Ordinance No. 130 the Police Committee of the Village Council should have considered applications for Chief

of Police and that the Mayor of the Village should have designated and appointed a qualified person as Chief of Police subject to confirmation by the Village Council.

We are further informed that the present Chief of Police of Espanola was never duly qualified to hold office under Ordinance No. 130 inasmuch as no action of confirmation is disclosed in the minutes of the village and no Police Committee report is filed with the Village Clerk to this date.

In view of the above, for the purpose of rendering this opinion, we will assume that the present Chief of Police of the Village of Espanola has, in fact, never duly qualified under Ordinance No. 130. This factual situation brings us to the question under consideration, to-wit, is it now necessary for the Police Chief to qualify under Ordinance No. 130. In our opinion, he must.

From the facts presented, the Police Chief was qualified under an ordinance now repealed by the new ordinance. It was the intention of the village that the Police Chief should be qualified under the new ordinance since the said ordinance clearly states in Section 11-f, referred to above, that applications for Chief of Police should be considered by the Police Committee of the Village Council and that the Mayor should then designate and appoint a qualified person as provided by the ordinance. As we view Ordinance No. 130, its purpose was not to remove the Police Chief who qualified under Ordinance No. 117, but to completely abolish the office established under Ordinance No. 117 and to recreate the office under Ordinance No. 130. If, in fact, the present Police Chief has never qualified under the new ordinance, he should do so to give legal standing to his present position.

It is submitted by this office that the present Chief of Police should be given consideration and an opportunity to qualify under Ordinance No. 130. His appointment to this office, however, would be subject to the provisions contained in Section 11-f of Ordinance No. 130, assuming that the said ordinance was legally adopted.