

## Opinion No. 59-25

March 10, 1959

**BY:** Frank B. Zinn, Attorney General

**TO:** Honorable Earl Hartley Senator, Curry County New Mexico State Senate Santa Fe, New Mexico

A city which has adopted the city manager form of government and which has achieved a population in excess of 10,000 people must be governed by the commission-manager form of government applicable to cities of 10,000 people or more.

### OPINION

{\*36} This is in answer to your recent opinion request in which the following question was raised:

Must a city which has achieved a population in excess of 10,000 people and has previously adopted the city manager form of government be governed by the commission-manager form of government applicable to cities of 10,000 people?

In my opinion, in accordance with Section 14-11-1, subsection (B), N.M.S.A., 1953 Compilation, 1957 Pocket Supplement, cities having a population of over 10,000 people must adopt the city manager form of government used by cities in the class of cities of 10,000 or more.

Section 14-1-1, supra, generally provides that all cities of the State of New Mexico which have a population of more than 3,000 people and less than 10,000 people according to the last federal census shall be organized and be conducted under the commission-manager form of government if at an election they agreed to be so governed. Subsection (B) of this section provides:

"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."

Section 14-10-1 through 14-10-27 provides the method in which cities of a population in excess of 10,000 people are to be governed.

The question raised by the sections quoted above is whether subsection (B) of Section 14-11-1 is self-executing or, in other words, whether the legislature may by a legislative enactment alter or amend the charter or act of incorporation of a municipal corporation. The answer to your question seems to be found in 62 C.J.S. page 206, Section 89, in which this text states:

"The legislative authority to create and incorporate municipal corporations, considered supra Section 6, embraces the right to alter or amend the original charter or act of incorporation. This is a corollary of the inherent and sovereign power of the legislature over all agencies of government, wherein it is not restricted by constitutional limitations. The power of the legislature to amend municipal charters or to provide a new charter for a municipality is subject, however, to constitutional limitations, such as provisions with respect to the enactment of laws."

I have found no constitutional provision or limitation which restricts the legislature from altering or amending the charter or act of incorporation of a municipal corporation. Applied to the facts set out in your opinion request, it would seem that since the City of Clovis now has a population considerably in excess of 10,000 people that Section 14-11-1, subsection (B) requires, that the operation of the city government be in accordance with the requirements of Sections 14-10-1 through 14-10-27 applicable to cities of over 10,000 people.

Fred M. Calkins, Jr.

Assistant Attorney General