

## Opinion No. 60-218

December 8, 1960

**BY:** OPINION of HILTON A. DICKSON, JR., Attorney General

**TO:** Mr. Jay Morgan City Attorney Portales, New Mexico

### QUESTION

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Can an incorporated municipality adopt, as an ordinance, Chapter 64 of New Mexico Statutes, making the violation of any of the provisions of Chapter 64 a misdemeanor, and prescribing a penalty for such violations, without setting forth the substance of Chapter 64 or any of the acts of commission or omission that constitute misdemeanors, but merely adopting Chapter 64 by reference?

#### CONCLUSION

Yes.

### OPINION

#### {\*637} ANALYSIS

Chapter 64, N.M.S.A., 1953 Compilation, is the entire motor vehicle code of New Mexico. Municipalities may adopt motor vehicle ordinances notwithstanding state statutes cover the same subjects and provide penalties for violations, **Mares v. Kool**, 51 N.M. 36, 177 P.2d 532 (1947). Granting the power to adopt such ordinances, may a municipality adopt the state law by reference only, without setting forth the substance of the law? In our opinion, they may.

Section 14-25-8, N.M.S.A., 1953 Compilation (P.S.), is the statute applicable to the adoption of municipal motor vehicle codes, among other things. It provides:

"The governing bodies of H class counties and of incorporated cities, towns and villages, whether incorporated under general or special acts, are empowered and authorized to adopt by ordinance the conditions, provisions, limitations and terms of a Fire Prevention Code, a Building Code, an Electrical Code, a Plumbing Code, a Traffic Code, an Air Pollution Code, an Elevator Code or any of such codes, not in conflict with any statute of the state or valid regulation issued by any board or agency of the state authorized to make such regulations; Provided any code so adopted shall provide for minimum requirements at least equal to the state code on the subject. Any such code may be adopted by reference to the proper title and date of the code alone without setting forth in the ordinance its conditions, provisions, limitations and terms, Provided

that the ordinance shall in all cases specify at least one (1) place within the municipality or H class county where any such code so referred to will at all reasonable times be available and subject to inspection; and a copy of any such code shall be available upon request. Any amendment to any such code may be similarly adopted."

Hence, incorporated municipalities are given express power to adopt traffic codes merely by reference to the proper title and date of the code on the same subject, provided that the entire code so adopted is made available for inspection at at least one place within the municipality, and provided {\*638} that a copy of the code is made available upon request.

This opinion assumes that the only portions of Chapter 64 sought to be adopted in the ordinance are the traffic provisions, and such sections as are properly included within the term "Traffic Code". Chapter 64 actually goes far beyond this and includes such things as the state gasoline tax, automobile financing, regulations on the sale of anti-freeze, regulations on the purchase and use of stateowned vehicles, and regulations governing the New Mexico Traffic Safety Commission. But if an incorporated municipality wishes to adopt as an ordinance all parts of Chapter 64 of New Mexico Statutes that deal with the subject of traffic, we are of the opinion that they may do so merely by reference to the proper title and date of the state code on the same subject.

By: Norman S. Thayer

Assistant Attorney General