

Opinion No. 65-237

December 9, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Santiago E. Campos, City Attorney, City of Espanola, P.O. Drawer A, Santa Fe, New Mexico

QUESTION

STATEMENT OF FACTS

A person was appointed to act as city manager by the Mayor of Espanola with the approval of the City Council of Espanola before an ordinance authorized such hiring. Later, an ordinance was passed giving authority for the appointment of a city manager by the Mayor with the approval of the City Council. Between August 7, 1965, the date the ordinance was passed, and October 7, 1965, the date the ordinance was first published, the Mayor suspended the person previously appointed.

On October 11, 1965, the City Council met and passed the following motion:

"I move that Mr. ____, City Manager for the City of Espanola be reinstated as City Manager effective tonight, October 11, 1965, and that on October 12, 1965, at 8:00 A.M., be dismissed as City Manager. Also, he be given sufficient time to remove his personal belongings from his office. And that he be given full restitution as provided for by the City Manager's Ordinance. That he be paid any money owed him up to tonight any vacation or annual leave coming to him tomorrow."

The City Manager's Ordinance contains a paragraph in Section 8 thereof which deals with immediate suspension of a city manager. The paragraph reads as follows:

"By the preliminary resolution the council may suspend the manager from duty, but shall, in any case, cause to be paid him forthwith any unpaid balance of his salary, and his salary for the next two calendar months following adoption of the preliminary resolution." (Emphasis supplied)

QUESTION

Must the City of Espanola pay this person severance pay of two calendar months of salary pursuant to the City Manager's Ordinance passed by the Espanola City Council?

CONCLUSION

No.

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{*387} ANALYSIS

Section 14-12-3, N.M.S.A., 1953 Compilation (P.S.), provides as follows:

{*388} "Appointment of manager -- Duties and qualification. -- The governing body of any municipality having a population of three thousand [3,000] or more persons may provide for a manager either by ordinance or by an election to be called by the governing body upon the filing of a petition containing the signatures of at least ten per cent [10%] of the registered voters in the municipality. **The office of manager shall carry the same qualifications, duties and responsibilities as provided for a manager under Sections 14-13-13 through 14-13-15, New Mexico Statutes Annotated, 1953 Compilation.** (Emphasis supplied)

Section 14-13-3, supra, specifically provides that the standards set up by Sections 14-13-13 to 14-13-15, supra, be met in the city manager situation.

Section 14-13-13, supra, reads as follows:

"Manager -- Employment -- Qualifications -- Salary -- The manager shall be the chief administrative officer. **He shall be employed for an indefinite term and until a vacancy is created by death, resignation or removal by the commission.** The manager shall be appointed solely on the basis of administration qualifications and his selection shall not be limited by reason of former residence. The manager shall receive a salary to be fixed by the commission." (Emphasis supplied)

Furthermore, Section 5 of the Espanola Ordinance involved reads as follows:

"Section 5. Term. The City Manager shall be appointed for an indefinite term."

The employment of the city manager by the Espanola City Council was definitely not for an indefinite period. The standard required by the Statute and the enabling Ordinance was not met. Therefore, the action taken by the Espanola City Council was void and of no effect. There should be no wages paid pursuant to the ineffective attempt to appoint a city manager.