

Opinion No. 65-238

December 14, 1965

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

TO: Mrs. Margaret M. Fisher, Clerk-Treasurer, Town of Santa Rosa, Santa Rosa, New Mexico

QUESTION

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1. In mayor-council municipalities may ticket designations to be used in municipal elections?
2. In determining the place the candidate is to be listed on the ballot, is the determination by lot to be made for the office of mayor and then by separate lot for each of the various council or trustee positions to be filled?

CONCLUSIONS

1. See analysis.
2. Yes.

OPINION

{*388} ANALYSIS

We point out initially that when such a massive piece of legislation as the Municipal Code is enacted, certain conflicts and inconsistencies therein are most likely to subsequently appear. That is the situation in connection with the Municipal {*389} Code election provisions.

Section 14-8-12 (B) of the Municipal Code provides that in commission - manager municipalities the election for commissioners shall be non-partisan and the names of all candidates are to be listed on the ballot without party or slate designation.

Since this limitation is made applicable only to commission-manager municipalities, it would seem that the restrictions would not apply to mayor-council municipalities. Section 14-8-9 of the Municipal Code indicates this by providing that "the municipal clerk shall publish the names of the candidates for each office and position to be filled in the order their **names or ticket designation** will appear on the ballot."

This necessitates an examination of the provisions relating to the method of determining the order in which the names of candidates are to be listed on the ballots. The pertinent provision is Section 14-8-12 A of the Municipal Code wherein it is stated as follows:

"The order in which the names of candidates are listed on the ballot shall be determined by lot."

If this provision is to be given effect, there can be no ticket designation as such. It would be most unlikely that one party's candidates would all draw the top spot. And if a **true** ticket designation were to be used, the ballot would look something like the following:

CITIZENS' PARTY

MAYOR

JOE D.

COUNCILMAN

(Position 1)

Richard R.

COUNCILMAN

(Position 2)

DAN D.

COUNCILMAN

(Position 3)

TOM T.

GOOD GOV'T PARTY

MAYOR

BILL B.

COUNCILMAN

(Position 1)

Wayne W.

COUNCILMAN

(Position 2)

ROY R.

COUNCILMAN

(Position 3)

CARL C.

REFORM COMMITTEE

MAYOR

JIM J.

COUNCILMAN

(Position 1)

MEL M.

COUNCILMAN

(Position 2)

ALBERT A.

COUNCILMAN

(Position 3)

FRANK F.

Yet Bill B. may have been the winner of the lot drawing for the top spot on the ballot for mayor, while the councilmen (aldermen) running on Bill B's ticket may have drawn first, second and third ballot spots. We see then that to use a true "across-the-board" ticket designation would do violence to the determination by lot set forth in Section 14-8-12, A, supra.

However, it is a fundamental rule of statutory construction that all parts of an Act should be read together (**Sakariason v. Mechem**, 20 N.M. 307) and insofar as possible, effect should be given to each provision. **El Paso Electric Co. v. Milkman**, 66 N.M. 335, 347 P. 2d 1002.

There is a method whereby the determination by lot provision can be given effect and the ticket designation provision can be given partial effect. The procedure is to draw lots for positions on the ballot but to allow the candidate to list his party or ticket designation after his name if he so requests in his declaration of candidacy, no matter what ballot position he may have drawn. The publication should {*390} show this designation as well as the candidate's position.

EXAMPLE:

MAYOR

Joe D. (Citizens' Party)

Bill B. (Good Gov't Party)

Jim J. (Reform Committee)

COUNCILMAN

(Position 1) etc.

Mel M. (Reform Committee)

Richard R. (Citizens' Party)

Wayne W. (Good Gov't Party)

While this is not a ticket designation in the usual sense of the word, since all candidates are not listed straight across from a particular party or ticket designation, it is the closest thing to it that can be achieved and still comply with the determination by lot provision.

You will note from the foregoing that we show councilmen running by position. This is the subject matter of your second question.

Prior to the effective date of the Municipal Code, under the mayor-council form of government for cities the people elected a mayor and a board of aldermen. The aldermen ran from wards but were voted on by the entire city electorate. Section 14-15-1, since repealed; **Wright v. Clossen**, 29 N.M. 546, 224 Pac. 483.

The organization of mayor-council government in towns and villages was similar to mayor-council government in cities. One difference was that in towns the people elected a mayor, four trustees and a recorder, Section 14-16-3, since repealed. In villages, the council was composed of a mayor and four trustees elected by the people. Section 14-16-8, since repealed.

Now, even though these sections have been repealed, the Municipal Code continues to speak in terms of office **or** position. Sections 14-8-8, 14-8-9, 14-8-12 and 14-8-13, supra. Use of the phrase "office or position" indicates to us a legislative intent to continue to permit the use of wards in the same manner as previously. Further, the Municipal Code contained a savings clause which reads as follows:

"Any ordinance in effect on the effective date of the Municipal Code shall continue in effect except as the ordinance is modified or altered by the provisions of the Municipal Code. Any municipal charter whether granted by general or special act or adopted pursuant to any general or special act shall continue in effect. Laws 1965, Chapter 300, Section 592."

The use of wards is not in conflict with any provision of the Municipal Code, and, presumably, most mayor-council municipalities have ordinances setting up wards.

One additional factor leads us to the conclusion that wards may continue to be used in municipal elections. Section 14-8-12 (D) provides that:

". . . space shall be allowed on each ballot for a qualified elector to write in the name of one candidate for each **office or position** to be filled." (Emphasis added).

If candidates for the council did not run by position, then the elector could write in the name of only one candidate even though he wished to write in a name for each of the council seats to be voted on. It seems reasonable to assume that the legislature did not intend to grant the writ-in privilege and then severely restrict it.