

## Opinion No. 66-101

August 15, 1966

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

**TO:** Richard H. Folmar, Assistant Director, New Mexico Legislative Council, State Capitol Building, Santa Fe, New Mexico

### QUESTION

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In 1962 a municipality properly adopted an ordinance. Is a repeal of such an ordinance effectuated by a simple motion and majority vote of the municipality's governing body without further action save noting such action in the minutes of the governing body's meeting?

#### CONCLUSION

No.

### OPINION

#### {\*135} ANALYSIS

The adoption of municipal ordinances is now governed by the provisions of the Municipal Code (Section 14-16-1 through 14-16-5, N.M.S.A., 1953 Compilation (P.S.)). However, the present provisions are not basically different from those which preceded them. See Section 14-25-1 through 14-25-8, N.M.S.A., 1953 Compilation, parent volume, since repealed and Attorney General's Opinion No. 60-138.

In 1962, as at present, the statutes provided adequate methods of notifying the electorate of any ordinance adopted by the governing body of a municipality. And under the prior statutes our State Supreme Court held that ordinances must be so identified as to give general notice to all concerned of the character of the enactment. **Clovis v. North**, 64 N.M. 229, 327 P.2d 305.

{\*136} The repeal of an ordinance may well be of the same interest to the public as the enactment of the ordinance itself. While our Municipal Code does not deal with repeal of ordinances, it is a well settled principle that the power to pass ordinances carries with it by implication the power to repeal them unless such power is restricted by charter or statute. **In re Annexation of Certain Territory to City of Salem, Ind.**, 91 N.E. 2d 648; **Isola v. Borough of Belmar, N.J.**, 112 A.2d 738; **Jefferson County v. Timmel, Wis.**, 51 N.W. 2d 518; **Blotler v. Farrell**, Cal., 270 P.2d 481.

It is also a general rule of municipal law that a city ordinance can only be repealed by another ordinance so providing. **Meyer v. Seifert, Ark.**, 225 S.W. 2d 4; **Harrison v. Snyder, Ark.**, 231 S.W. 2d 95; **Massey v. City Council of Des Moines, Iowa**, 31 N.W. 2d 875; **Humble v. City of Huntington, W. Va.**, 58 S.E. 2d 780.

We must conclude, therefore, that a validly enacted ordinance cannot be repealed by a simple motion and majority vote; it must be repealed by another validly enacted ordinance.