

Opinion No. 67-82

June 21, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: James B. Stapp City Attorney Roswell, New Mexico

QUESTION

FACTS

The municipal governing body of Roswell has heretofore initiated preliminary proceedings to establish a so-called "workable program" upon which to predicate an urban renewal project via a grant of federal funds within the purview of the Urban Renewal Law, Section 14-47-1 through 14-47-19, N.M.S.A., 1953 Compilation.

In opposition to the municipal undertaking of any such urban renewal project, the municipal governing body (May-or-Council form of local government) is in receipt of a petition bearing two thousand signatures, more or less, bonafide or not as the case may be, by means of which petition, petitioners seek to submit via popular referendum the question of whether or not the municipality should undertake any project within the purview of the urban renewal act.

QUESTIONS

1. What lawful action should be taken by the municipal governing body in order to dispose of the aforesaid petition?
2. As a corollary to question No. 1 above, may the municipal governing body lawfully call and hold a **special** election for the purpose of submitting to the qualified electorate the question of whether or not the municipality should undertake and participate in any so-called "urban renewal project" as such?
3. Assuming that the municipal governing body has **no** lawful authority to call and hold a special election for the purpose of submitting the question outlined in question 2 above, may the governing body submit said question to the qualified electorate at the next ensuing regular municipal election?

CONCLUSIONS

1. See analysis.
2. No.
3. No.

OPINION

{*119} ANALYSIS

In 1965 our legislature enacted a law known as the Urban Renewal Law. Sections 14-47-1 through 14-47-19, N.M.S.A., 1953 Compilation. This Urban Renewal Law sets forth in detail the procedures to be followed by the governing body of a municipality prior to commencing an urban renewal project. First of all under the Urban Renewal Law, the governing body of a municipality may formulate a workable program to eliminate and prevent the development or spread of slums and urban blight. However, before the governing body of a municipality can actually begin an urban renewal project it must prepare and approve an urban renewal plan.

Prior to approval of an urban renewal plan the governing body of the municipality must publish a notice containing a general description of the area and the date, time and place where the governing body will hold a public hearing to consider the resolution approving the plan and to hear protests of the plan by interested persons. After a resolution is properly passed, any owner of real property in the area affected by the resolution may file an action to set aside the resolution of the governing body in the district court of the county wherein the municipality is located. This action must be filed within thirty days after the resolution. We find nothing in the Urban Renewal Law allowing a referendum on the question of whether or not a municipality should undertake an urban renewal project.

Where there is no constitutional or statutory authority for submission of a question to the voters for their decision, the governing body of a municipality is without authority to pass ordinances providing for a referendum of any kind. **Muerhing v. School Dist. No. 31**, 28 N.W. 2d 655 (Minn., 1947); **City of Mt. Olive v. Braje**, 7 N.E.2d 851 (Ill. 1957); 62 C.J.S. § 451(a), p.870; 5 **McQuillan on Municipal Corporations** § 16.49, p.243 (3rd ed).

In **City of Mt. Olive v. Braje**, supra, the Supreme Court of Illinois held that the legal voters of a municipality have no inherent or constitutional right to require the governing body to submit any legislation to a referendum. Such a right exists only by virtue of statutory enactments of the legislature. The reason for this rule is explained in **Muerhing v. School Dist. No. 31**, supra, as follows:

"It is elementary that a public corporation, agency, or officer to whom governmental power has been delegated by statute cannot redelegate such delegated power. Delegation of governmental power is a manifestation of legislative intention that only the public authority to which the delegation is made, and not some agency or person of its choosing, shall exercise such power. The power of choice is in the legislature, which it has exercised by the very act of delegation. Where there is statutory authorization for submission by a public authority of a question to the voters for their decision, there is no real re delegation of delegated power, but rather a division of the power between the public authority and the voters, under which in the first instance the public authority is

required to act with respect to the question, and afterward, upon submission of the question to them, the voters are required to decide whether to approve or disapprove of the action so taken. In such case, submission of the question to the electorate is mandatory, and the decision of the voters is controlling and binding." (citing cases)

{*120} **"Where there is no statutory authorization for submission of a question to the voters for their decision, such a submission by a public authority clothed with power with respect to the question submitted constitutes an authorized redelegation of delegated power.** In such a case, because the voters lack power with respect to the question submitted and because the public authority lacks the power to confer it upon them, submission of the question to the voters is without legal effect, and their decision is in no way controlling or binding . . ." (Emphasis added) Id at 658.

In New Mexico we find no constitutional provision allowing referendums of the decisions of the governing bodies of our municipalities. We find that our legislature has provided for referendum when the municipal governing body is the Commission-Manager form of government, (see Section 14-13-17, N.M.S.A., 1953 Compilation), but we find no such provision for the Mayor-Council form of government. We must therefore conclude that since there is no constitutional or statutory provision allowing referendums in the Mayor-Council form of government, submission of the decision to commence an urban renewal project to the voters would be an unauthorized redelegation of a delegated power to the governing body of the municipality.

This conclusion is further enforced by the fact that in New Mexico when a statute limits the time for appeal from municipal acts, the statutory remedy is exclusive and the action must be brought within the time period allowed. **Leavell v. Town of Texico**, 63 N.M. 233, 236, 316 P2d 247 (1957). Under our Urban Renewal Law a property owner affected by the resolution of the governing body may bring an action in the district court in the county in which the municipality is located within thirty days after the decision of the governing body. If this time period has lapsed, no other remedy is available.

In answer then to questions 2 and 3, since there is no constitutional or statutory provision for a referendum in a Mayor-Council form of municipal government, the governing body of such a municipality may not legally submit its decision to commence an urban renewal project to the voters at either a special or general election. In answer to question 1, it is our opinion that no lawful action may be taken on the petition for a referendum vote.

By: Gary O'Dowd

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