

Opinion No. 71-26

February 19, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Honorable Bennie J. Aragon State Representative House of Representatives
Legislative Executive Building Santa Fe, N.M. 87501

QUESTIONS

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1. Can the thirtieth legislature change the number of city commissioner districts in Albuquerque and specify in the bill the exact constituency of the districts by indicating ward and precinct designations even though the name of the city (i.e., Albuquerque) is not mentioned in the bill, but rather, the references are to "cities having a population of one hundred thousand or more persons?"
2. Can the legislature require Albuquerque to district at a later time if Albuquerque adopts a charter without districting?
3. Is House Bill 239, 30th Legislature, 1st Session, 1971, constitutional?

CONCLUSIONS

1. No.
2. No.
3. No.

OPINION

{*42} ANALYSIS

Article X, Section 6 of the New Mexico Constitution (the home rule amendment approved by the voters in November, 1970) provides in part as follows:

"A. For the purpose of electing some or all of the members of the governing body of a municipality:

- (1) the legislature may authorize a municipality by general law to be districted;
- (2) if districts have not been established as authorized by law, the governing body of a municipality may, by resolution, authorize the districting of the municipality. The

resolution shall not become effective in the municipality until approved by a majority vote in the municipality; and

(3) If districts have not been established as authorized by law or by resolution, the voters of a municipality, by a petition which registered qualified electors of the municipality and which specifies the number of members of the governing body to be elected from districts, may require the governing body to submit to the registered qualified electors of the municipality, at the next regular municipal election held not less than sixty days after the petition is filed, a resolution requiring the districting of the municipality by its governing body. The resolution shall not become effective in the municipality until approved by a majority vote in the municipality. The signatures for a petition shall be collected within a six-month period." (Emphasis added)

One of the most important provisions in Article X, Section 6 is paragraph numbered B which reads:

"Any member of the governing body of a municipality representing a district shall be a resident of, and elected by, the registered qualified electors of that district."

This provision supersedes the "at large" voting provision contained in Section 14-13-6, NMSA, 1953 Compilation.

While the home rule amendment is surely no example of artful drafting, we will not attempt to explain it -- at least insofar as answers to your questions are concerned.

The legislature can **only authorize** municipal districting. The legislature itself cannot (and never intended that it would) "draw" the district lines. If it had, presumably the amendment that was submitted to the electorate would have said something like "The legislature may **establish** municipal districts." And then there would have been a problem of local or special legislation under the prohibition in Article IV, Section 24 notwithstanding use of the phrase "by **general** law" in the home rule amendment.

The legislature handled the problem of county districting in much the same manner that has been accomplished by Article X, Section 6. The following amendment to Article V, Section 13 of the Constitution was passed by the legislature and submitted for approval to the electorate: "The legislature is authorized to enact laws permitting division of counties of this state into county commission districts." The {43} amendment was adopted in 1960, the legislature did enact districting authorization and counties did district. Section 15-37-3, NMSA, 1953 Compilation. As here, the legislature did not attempt to give itself the authority to actually **do** the districting.

Paragraph numbered 2 of Article X, Section 6 is perplexing in that it appears to be redundant. We can only assume that the legislature recognized that a municipality might not wish to utilize a particular procedure for districting so it gave municipalities the power to use the resolution and majority vote alternative.

Thus, in specific answer to your first question, the legislature, by its own choice, passed the home rule amendment, later adopted by the electorate, denying itself the right to actually **establish** city commission or council districts for any municipality, Albuquerque included.

Likewise, in answer to your second question, no provision was incorporated in the home rule amendment permitting it to force any municipality to district. The petition method incorporated as paragraph numbered (3) may be used by the electorate to force a recalcitrant municipality to district. When the districting has been accomplished, each member of the governing body must be a resident of and elected by the registered qualified electors in his district.

House Bill 239, sponsored by you and a majority of the members of the House of Representatives, is clearly unconstitutional. I would hasten to point out that House Bill 239, or a comparable approach, would more closely conform to the new found and now constitutionally guarded concept of "one man-one vote". This concept was obviously considered by the legislature in adopting the home rule constitutional amendment submitted and approved by the electorate on November 3, 1970. A portion of said constitutional amendment, and particularly Section 1 (B) says:

"B. Any member of the governing body of a municipality representing a district shall be a resident of, and elected by, the registered qualified electors of that **district**." (Emphasis added)

Recognizing the unconstitutionality of House Bill 239, I have been handed a copy of a House Joint Memorial which I understand you intend to introduce into the House of Representatives next week. This memorial, together with the contents of House Bill 287, seems to me to represent the concern of the legislature regarding districting and the "one man-one vote" concept, and documents the legislative intent of the 29th Legislature and should successfully purge you of any illicit or arrogant motives which have been assigned to you, if in fact, you intend to recommend to the House Privileges and Elections Committee that House Bill 239 be given a "do not pass" recommendation to the full house.