

Opinion No. 87-16

April 27, 1987

OPINION OF: HAL STRATTON, Attorney General

BY: David A. Garcia, Assistant Attorney General

TO: Honorable Alfred W. Nelson, New Mexico State Senator, 707 Lee Drive, Las Vegas, New Mexico 87701

QUESTIONS

May the city charter of a non-home rule municipality provide municipal judges with terms of a different length than those mandated by statute?

CONCLUSIONS

No.

FACTS

Las Vegas, a non-home rule municipality, adopted in 1969 a city charter which provides that municipal judges shall be elected for two-year terms. Section 35-14-4 N.M. Stat. Ann. 1978, however, sets forth a four-year term of municipal judges.

ANALYSIS

Article 1, section 3 of the Second Part of the Las Vegas City Charter provides: "The term of office of the mayor and the municipal judge shall be two years. They shall be elected at large every two years beginning in March, 1970."

Section 35-14-4 N.M. Stat. Ann. 1978 states: "Municipal judges shall be elected, for terms of four years, at a regular municipal election." It is well established that ordinances of non-home rule municipalities which conflict with statutes are not valid. *Williams v. City of Tucumcari*, 31 N.M. 533, 249 P. 106 (1926); *State ex rel. Black v. Aztec Ditch Co.*, 25 N.M. 590, 185 P. 549 (1919). As stated by the Supreme Court of New Mexico in *City of Clovis v. Crain*, 68 N.M. 10, 13, 357 P.2d 667, 669 (1961):

The rule is well established that where the statute directs in definite terms the manner in which municipal acts are to be exercised such statutory method must be substantially followed.... Also the direction of definite and certain methods of procedure in the grant of power to the municipality excludes all other methods by implication of law.... Moreover, the statutes making the grant of power to the municipality must be strictly construed, and the municipality must keep closely within its limits.

Section 35-14-4, which was in effect when the ordinance was enacted, clearly states the term of office enjoyed by municipal judges. The ordinance cannot supersede the statute. Therefore, the ordinance is not valid. Municipal judges in non-home rule municipalities must be elected for four-year terms.

ATTORNEY GENERAL

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