

Opinion No. 12-957

November 18, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Mr. W. B. Robinson, Artesia, N. M.

CITIES AND TOWNS.

Sec. 11, Chap. 87, Laws of 1909, includes all cities and towns of state,

OPINION

{*113} I have received your letter of the 14th inst. in which you ask whether the provision in Section 11 of Chapter 87 of the Laws of 1909 applies only to cities organized under that act having a population of 3,000 or more, or whether it also applies to all towns and villages having a population of less than 3,000 and organized under some other act.

The doubt indicated by your question undoubtedly arises from the condition of the law in those states where there are constitutional limitations upon forms of legislation, similar to those which we now have in our constitution, and which would make invalid any legislative provision in an act not germane to the purposes indicated by the title. Such a clause as the one about which you ask, if inserted by our state legislature in such an act, would, in view of our constitution, either be invalid or construed to relate only to the main purpose of the act and to the municipalities indicated as such main purpose; but at the time that that act was passed there was no such limitation upon legislative power and the proviso in question would be perfectly valid if it had related to some entirely different and disconnected subject. As you are aware, complaint has been frequent on account of the insertion in acts of Congress, especially in the case of appropriation bills of matters of general legislation, which have some times been adopted without attracting any attention, and our legislature, in this particular, under the territorial government was as unhampered as Congress. Practically the only limitations upon the territorial legislature were those to be found in the act of Congress commonly called the "Springer Act" which prohibits local or special legislation in a number of enumerated cases.

Therefore, I am unable to say that the language of the proviso in question can be so construed as not to include all cities and towns in the territory. The subsequent adoption of the constitution would not, of course, have any retroactive effect in such a matter as this.