

**Opinion No. 19-2276**

May 23, 1919

**BY:** HARRY S. BOWMAN, Assistant Attorney General

**TO:** Mr. W. H. Angell, Vaughn, New Mexico.

Villages Cannot Consolidate.

**OPINION**

We are in receipt of your letter of the 20th instant, requesting an opinion from this office regarding the right of the villages of Vaughn and East Vaughn to legally consolidate, advising that by election held on the 17th instant 47 votes were cast for the consolidation, while 20 were cast against it.

The question you propose is not at all free from difficulty, due to the chaotic condition in which we find the laws of this state governing questions of the rights, powers and authority of municipalities.

You state that the two villages are nearly a mile apart. I am unable to arrive at just exactly what you mean by that statement. Do I understand you to mean that the nearest boundary of one of the villages is a mile from the nearest boundary of the other village, and that there is a strip of about a mile in width between the boundaries of the two cities? If this condition prevails, then there is no law under which the two villages could consolidate.

On the other hand, if the villages are contiguous, that is, the boundary of the one is the same as the boundary of the other, then we are confronted with a more serious situation.

Under date of February 20, 1919, I wrote to Mr. W. T. Brothers at Santa Rosa, New Mexico, advising him that in my opinion two villages that are contiguous, and that take the proper steps preliminary may consolidate under the provisions of section 3543, Code 1915, suggesting therein that in my opinion the right to consolidate was conferred upon villages in that section, although they were not specifically designated. In accordance with an opinion rendered by former Attorney General Frank W. Clancy on May 12, 1914, I was of the opinion that the words "city or incorporated town" in the said section referred also to "incorporated villages."

Since writing the former opinion above mentioned, I have had opportunity to make further examination into this matter and to carefully read over all the authorities that I find upon the subject, and there is some doubt in my mind, by reason of such investigation, as to the right of villages to incorporate under the section above mentioned.

Section 3549 appeared as section 2398 of the Compiled Laws of 1897. Contained in the same chapter of the said Compiled Laws are sections 2469, 2470, 2476, 2478, 2479, 2481, and 2482, all of which seem to treat the words "towns and villages" as synonymous, while other sections occurring in connection with those just enumerated refer only to "towns" and clearly indicate that it was intended to include villages under these provisions. All of the sections above mentioned, excepting section 2470, were subsequently repealed, and do not appear in the present Codification, but we must consider them in arriving at a correct construction of the terms "cities or incorporated towns" in section 3543. Most of the authorities hold that where in the same enactment the words "cities and towns" or "cities and villages" have been used and subsequently only the word "city" appears in referring to the same matter, the latter term has been held comprehensive enough to include towns or villages.

Burke vs. Monroe County, 77 Ill. 610;

Stimson Mill Co. vs. Board of Harbor Line Commissioners (Wash.) 29 Pac. 938;

People vs. Stephens, 62 Ga. 209.

It will be noted that section 2469 refers to incorporated towns and villages as do sections 2470, 2476, and the other sections heretofore mentioned.

It might, therefore, be held that by reason of the codifying of these in the Compiled Laws of 1897, under the authority of the holding in the cases above cited, that incorporated villages could be included in the provisions of section 3543.

Further examination shows, however, that section 3543 was a part of Chapter 39 of the Laws of 1884, in which chapter we find no mention made of incorporated villages, while the other sections mentioned compose the greater part of Chapter 32 of the Laws of 1891, wherein specific provision was made for incorporated villages as well as towns.

It would appear, therefore, as if the legislative intent, in enacting Chapter 39 of the Laws of 1884, was to limit its provisions to incorporated cities and towns only, and that it afterwards provided for the incorporation of villages and towns by the provisions of Chapter 32 of the Laws of 1891, and that therefore the provisions of section 3543, Code 1915, might be held not to be applicable to incorporated villages.

At the time that I wrote the opinion to Mr. Brothers, we were of the opinion that the provisions of section 3543 applied to the consolidation of villages as well as incorporated cities and towns, but we are frank to say that our views have been somewhat modified, if not entirely changed, by the further investigation that we have made, and yet we are still not prepared to state positively that villages cannot consolidate under the provisions of this last named section.

The matter is one of so much uncertainty and one which may be of so much importance to the villages of Vaughn and East Vaughn, that we would suggest that a proper legal

proceeding be brought at once to test the validity of the attempted consolidation provided for by the election held on May 17th.

In view of the modification of the former opinion heretofore rendered to Mr. Brothers in regard to this matter, we are sending him a copy of this opinion.