

Opinion No. 25-3801

February 25, 1925

BY: JOHN W. ARMSTRONG, Attorney General

TO: Requested by: Hon. C. H. Hanke State Representative, Santa Fe, New Mexico, on February 21, 1925.

Chap. 111, S. L. 1919, does not effect the provisions of the village Act, Secs. 3764-3780, Code 1915, or the town Act, Secs. 3745-3763, Code 1915. The village Act, however, is amended by Secs. 1, 2 and 3, Chap. 37 S. L. 1921, and Chap. 7, 21, 42, and 59, S. L. 1919; and Sec. 1, Chap. 103, S. L. 1923.

OPINION

Your inquiry follows:

"I will ask you to look at Chapter 111, Laws of 1919, same being "An Act regulating city government." I will ask you to also look at Sections 3768 and 3769, New Mexico Statutes, Codification 1915, also Sections 3750, 3751 and 3752.

The Act of 1919 does not carry a repealing clause. Under what law shall village officers be appointed? In a village incorporation is the village marshal appointed under Section 3752 or Section 3769, or under Chapter 111, Laws of 1915? Or can the village trustees determine under which law the village marshal shall be appointed?

If appointed under Section 3769, and no ordinance in effect providing for election, can village trustees provide by ordinance for election at next general election of village officers and in the interim make appointment.

If village marshal and treasurer are appointed under Chapter 111, Laws of 1919, and the mayor would present to the village trustees a list of appointments, and if the trustees would move by motion that other names be substituted for those appointed by mayor, and the mayor would put the motion and all trustees voted "Aye", and the mayor would declare motion passed, and minutes so show, would the names substituted be the officers for the time specified?

Chap. 111, S. L. 1919, does not effect the provisions of the village Act, Secs. 3764-3780, Code 1915, or the town Act Secs. 3745-3763, Code 1915. The village Act, however, is amended by Secs. 1, 2, and 3, Chap. 37, S. L. 1921, and Chaps. 7, 21, 42, and 59, S. L. 1919; and Sec. 1, Chap. 103, S. L. 1923.

Your inquiry states the municipality in question is a village. It, then, would be governed by the village Act. However, if the village has complied with Chap. 7, S. L. 1919, it would

then be an incorporated town and would be governed by the provisions of the town "Act."

It would seem that Secs. 3745 and 3746, Code 1915, applies to villages as well as to towns, therefore, the elected officers for villages would be for a term of two years, the election would be held on the first Tuesday of April of each even numbered year, the officials to enter upon their duties the first Monday in succeeding their election.

It takes the act of both the trustees and the mayor to lawfully constitute any person, town marshal, the mayor must appoint and a board must consent, otherwise, there is no legally constituted marshal. If the Board of Trustees has substituted names other than those proposed by the mayor, the persons so substituted are not legally constituted officers. I am assuming that the "village" to which you refer has, in fact, become a "town" under the provisions of said Chap. 7. This assumption is based upon your oral statement. Therefore, the appointment of marshal would be made under the provisions of Sec. 3752, Code 1915.

If there be no ordinance providing for the election or appointment of a treasurer, there is no authority whatever for such an official and therefore none could be appointed until after the taking effect of the ordinance. After the ordinance is in full force and effect, the treasurer might be appointed in conformity with the provisions of the ordinance providing the vacancies.