

## Opinion No. 32-417

March 17, 1932

**BY:** E. K. Neumann, Attorney General

**TO:** Mr. M. W. Hamilton, City Attorney, Santa Fe, New Mexico.

{\*151} Your letter of March 17th, 1932, requests an opinion of this office as to the construction of Chapter 85 of the Session Laws of 1931 with reference to city elections.

You state the question has arisen as to whether the 1931 Law makes the offices of city clerk and city treasurer appointive offices instead of elective offices as had been provided prior to the passage of the 1931 Act and whether or not a city council might elect to make such offices elective notwithstanding the provisions of the 1931 Law.

Chapter 85 of the 1931 Session Laws, which, deleting formal parts of the enactment, is as follows, amending Section 90-604, 1929 Code.

"The qualified electors of cities shall on the first Tuesday of April of each even numbered year elect one mayor for the term of two (2) years, and shall elect one alderman from each ward, who shall hold their offices for the period of four (4) years. Provided that the City Council of all such cities shall have power to appoint one clerk and one treasurer for the term of two years, who shall perform the duties now required by law to be performed by clerks and treasurers, and who shall receive such compensation as may be fixed by the City Council of such cities in the manner now prescribed by law; Provided further that such City Council may provide the offices of City Clerk and City Treasurer shall be combined and held by one person, to be appointed by such City Council at such compensation as may be fixed by said City Council."

Said Section 90-604 of the 1929 Code, prior to the enactment of the above Act, provided that the elective officers of a city are mayor, one alderman from each ward, city clerk and city treasurer.

The 1931 Act quoted strikes out as elective officers the city clerk and city treasurer, leaving only the following to be filled by election, the office of mayor and the office of one alderman from each ward and provides that the offices of clerk and treasurer shall be filled by appointment.

In our opinion, the 1931 Act is mandatory and the offices of clerk and treasurer can be filled only by appointment as therein provided, and that it is not with the power of the City Council to elect to fill said office by election.

You will note, however, that the above quoted provision relates only to cities and not to towns and villages.