

**Opinion No. 42-3998**

January 21, 1942

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. Claron E. Waggoner District Attorney Socorro, New Mexico

{\*148} In your letter of January 16, 1942 you enclosed a letter from Corte O. Douglas, who has inquired as to how the position of Town Clerk-Treasurer could be declared an elective office.

Under Section 90-3418, New Mexico Statutes Annotated, 1929 Compilation, it is provided that the clerk shall be appointed by the Board of Trustees of towns and villages. However, under a later statute, the same being Section 90-3504, New Mexico Statutes Annotated, 1929 Compilation, the clerk is made an officer of a village, and this office has heretofore ruled that as such, a village clerk must be elected, the same as the Board of Trustees. I do not find any statute at all wherein any authority is found to provide for the election of a clerk in an incorporated town. To the contrary, Section 90-3418 provides for the **appointment** of a clerk in **towns**. The statutes specifically provide for the appointment of a clerk-treasurer in cities, and specifically provide for the **election** of a clerk in villages. It further provides that a village may pass an ordinance providing for the election of a treasurer, but the statutes are silent as to any mode in which a clerk may be elected in a **town**. I therefore conclude that the same cannot be done.

In passing on this question, I have assumed that Mountainair is incorporated as a **town**.

Trusting that the foregoing sufficiently answers your inquiry, I am

By HOWARD F. HOUK,

Asst. Atty. General