

Opinion No. 42-4013

February 7, 1942

BY: EDWARD P. CHASE, Attorney General

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

{*156} In your letter dated February 5, 1942, you request an opinion from this office as to the procedure for changing a municipal corporation from the status of a village to that of a town, and you also inquire what result such change will have upon the office of police magistrate.

In Opinion No. 3989, Section 90-101, New Mexico Statutes Annotated, 1929 Compilation, was cited, and in view of the same, it was held that when the number of inhabitants in a village exceeds 1500, the same may be deemed to be a town. However, in the writing of that opinion, Sections 90-3516 and 90-3517, New Mexico Statutes Annotated, 1929 Compilation, were overlooked. Under the provisions of these sections, the required number of inhabitants for the change is 500 or more. If a village meets the requirements of these two sections {*157} by causing a census to be taken, verified and recorded, as required thereby, then apparently a village having 500 or more inhabitants shall thereafter be deemed to possess all the powers and privileges by law granted to incorporated towns. *Ling vs. Village of Hot Springs*, 33 N.M. 569, 274 P. 46.

As to your second questions, this office has previously ruled that in the case of villages, the clerk is a village officer, and must be elected, while in the case of towns, the clerk must be appointed by the Board of Trustees.

Upon the question of police magistrates, Section 90-3515, of the 1929 Compilation, provides that the justice of the peace of the precinct wherein the incorporated village is situated shall be the police magistrate. However, in towns and cities, under the provisions of Chapter 230, Laws of 1939, the police magistrate shall be elected for a term of two years at each regular city election, and the justice of the peace within such town or city, may be a police magistrate, provided he is elected or appointed as such, but the justice of the peace is not necessarily required to be a police magistrate in towns and cities.

Trusting that the foregoing sufficiently answers yours inquiries, I am,

By C. C. McCULLOH

Asst. Atty. General