

Opinion No. 70-28

March 23, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: Mr. John N. Sanders City Attorney City of Lovington Lovington, New Mexico

QUESTIONS

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May a municipality, in view of Section 14-16-4 (C), N.M.S.A., 1953 Compilation, revise its 1961 Municipal Code by adding thereto ordinances published since codification, adding new ordinances conforming to State municipal law, inserting changes in old ordinances and leaving out entirely old and out-dated ordinances?

CONCLUSION

Yes.

OPINION

{*49} ANALYSIS

Section 14-16-4 (C) does not refer to content of publication within the Code, but rather refers to "publication" of the code within the meaning described in Section 14-16-4 (A). Section 14-16-4 (C) merely provides that the entire code need not be "published", with the word "published" being described in Section 14-1-2, N.M.S.A., 1953 Compilation. Your question is directed to content within the Code. As such your question is not answered by Section 14-16-4 (C), *supra*.

When municipal ordinances are codified, the understanding is that such code is a declaration of established law, rather than an enactment of new and different rules. **Basset v. United States**, 11 S. Ct. 165, 167, 137 U.S. 506, 34 L. Ed. 762.

Your question in part asks whether a municipality may add new ordinances which conform to State municipal law and whether changes in "old" ordinances may be inserted.

Any valid ordinance may be codified. **Basset v. United States**, *supra*. Since you use the term "ordinance", the presumption is that these enactments have been validly created by the city council, and that the municipality is now merely compiling, arranging and codifying. As such the municipality would not be restricted.

Your question as to whether a municipality may leave out "old" and "out-dated" ordinances from proposed codification is answered in the affirmative. Attention is drawn to the fact that municipal ordinances are not necessarily repealed by non-enforcement or non-codification. **Flinn v. Treadwell**, 120 Colo., 117, 207 P.2d 967 (1949); **Jayhawk Const. Co., v. City of Topeka**, 176 Kan. 517, 271 P.2d 769 (1954).

Municipal ordinances are repealed expressly or by implication. **John L. Hubbard Const. Co. v. City of Middlesboro**, 237 Ky. 652, 36 S.W.2d 38, (1931).

Assuming that the "old" and "outdated" ordinances have been previously "published", then non-codification does not now affect their status. However, inconsistency with "newer" ordinances may repeal by implication. **Groesbeck v. Mayor and City Council of City of Ely**, 74 Nev. 246, 328 P.2d 566 (1958); **Sullivan v. City of Worcester**, 346 Mass. 570, 194 N.E.2d 629 (1963).

Section 14-16-4 (D) (4), N.M.S.A., {*50} 1953 Compilation states that codification of municipal ordinances under the authority of the municipality is prima facie evidence of "publication", in court.

By: Frank N. Chavez

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