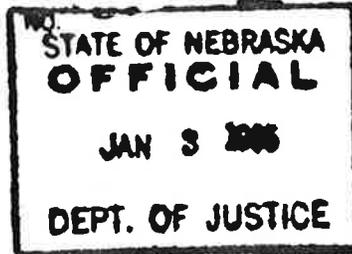


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

January 2, 1985



PAUL L. DOUGLAS  
Attorney General  
PATRICK T. O'BRIEN  
Deputy Attorney General  
JOHN R. THOMPSON  
Deputy Attorney General

Senator Tom Vickers  
Nebraska State Legislature  
State Capitol  
Lincoln, NE 68509

Dear Senator:

This is in response to your letter concerning Neb.Rev.Stat. §17-307 (Reissue 1983) and Neb.Rev.Stat. §17-311 (1984 Supp.), and the need for possible legislative clarification as to the statutes. Your question is whether the requirements of §17-311 are mandatory in spite of the language therein that would appear to create an exception under §17-307.

Section 17-311 provides in its pertinent part that:

(1) Except as provided in §17-307, whenever any village increases in population until it has a population of more than eight hundred inhabitants but less than five thousand inhabitants, as ascertained and officially promulgated by the census, enumeration, and return taken by the United States, by the State of Nebraska, or by the authority of the village board of such village, the village board shall certify such fact to the Secretary of State who, upon the filing of such a certificate, shall by proclamation so declare and shall declare such village to have become a city of the second class. Thereafter such city shall be governed by the laws of this state applicable to cities of the second class.

Section 17-307 provides in part that:

(1) Whenever any village shall attain a population exceeding eight hundred inhabitants and one-fourth of the legal voters, but not less than one hundred registered legal voters, therein shall petition the board of trustees of such village, the board of trustees shall cause to be published for at least thirty days a notice stating that the question of retaining a village form of government will be

Assistants

Bernard L. Peckett  
Mel Kammerlohr  
Harold I. Moehrer  
Terry R. Schaaf  
Marilyn B. Hutchinson  
J. Kirk Brown

Royce N. Harper  
Sharon M. Lindgren  
Lynne R. Fritz  
Ruth Anne E. Galtar  
Dale A. Comer  
Martel J. Bundy

Mark D. Starr  
Dale D. Brockey  
Linda L. Willard  
John B. Boehm  
Henry M. Grether III  
Calvin D. Hansen

Timothy E. Davis  
L. Jay Bartel  
Jill Gradwohl  
LeRoy Sievers

Senator Tom Vickers  
January 2, 1985  
Page -2-

submitted at the next regularly scheduled election or at a special election announced in such notice. Thereupon there shall be submitted by the board of trustees at such election the question of retaining a village form of government. Such election shall be conducted in the manner provided for cities of the second class. The form of the ballot at such election shall be For retention of village government, and Against retention of village government. If the majority of the votes cast are for retention of village government, then such village shall remain a village and be governed under the provisions of the law relating to villages, unless it shall, at some future election, adopt a city government in the manner provided herein for the adoption of a village government.

Section 17-307 was not specifically repealed in the legislation enacting §17-311, and §17-311 makes specific reference to §17-307. Thus in order to give meaning to both statutes, it would appear that a proper interpretation of §17-311 is that it is mandatory any time the specific requirements contained therein are met, unless the citizens of that village have petitioned the board of trustees for an election at which the question of retention of the village form of government will be decided pursuant to §17-307. You may, nevertheless, wish to sponsor a clarifying amendment in order to avoid any future disputes and disagreements.

Sincerely,

PATRICK T. O'BRIEN  
Deputy Attorney General



John Boehm  
Assistant Attorney General

JB:ccb

cc: Patrick J. O'Donnell  
Clerk of the Legislature