

## Opinion No. 56-6368

January 27, 1956

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Representative Mary Lou Lyon, 2271-B 48, Los Alamos, New Mexico and Senator Harold M. Agnew, Los Alamos, New Mexico

Recently you jointly requested an opinion of this office concerning the power of Los Alamos County, through its Commissioners, to pass taxing Ordinance No. 15 pertaining to the imposition of a gasoline and motor fuel tax and Ordinance No. 16 pertaining to the imposition of an occupation tax within the limits of Los Alamos County.

The County of Los Alamos has, under § 15-36-13, N.M.S.A., 1953 Compilation, Pocket Supplement, the following powers:

"Counties of the H class shall have, in addition to the other powers granted to counties by law, all those powers and authorities now or hereafter granted to incorporated municipalities, including those powers and authorities by which incorporated municipalities are or may be empowered to enact ordinances."

These powers and ordinances may be enacted through the provisions of § 15-36-14, N.M.S.A., 1953 Compilation, Pocket Supplement, which provides as follows:

"The board of commissioners of any H class county is authorized to make and publish from time to time ordinances not inconsistent with the laws of the state for carrying into effect or discharging the powers and duties conferred by law and such as shall seem necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of any H class county and inhabitants thereof."

You will note that in § 15-36-13 the words "all those powers and authorities now or hereafter granted to incorporated municipalities" are given to the County of Los Alamos.

Section 14-42-7, N.M.S.A., 1953 Compilation, permits the governing bodies of cities, towns and villages to provide for an occupation tax on certain occupations. Section 14-43-1, N.M.S.A., 1953 Compilation, provides that the governing bodies of cities, towns and villages "shall have the power to fix a motor fuel or gasoline tax".

The Legislature, we believe, in § 15-36-13, gave to the legislative body of the County of Los Alamos all powers to pass enactments and govern that county in exactly the same fashion as provided in the entire municipal code of this state.

You have supplied us with a statement attributed to Ralph Carlisle Smith raising certain questions with respect to the validity of the ordinances. While he points out that the

provision of § 15-36-14, relating to the ordinance making power, is almost identical with § 14-25-1 giving the same power to incorporated municipalities, we do not feel that it can, therefore, be concluded that the tax cannot be levied. We believe that Mr. Smith has not given sufficient weight to the portion of that section which we have quoted above, giving to H class counties **all** the powers of incorporated municipalities. Mr. Smith further contends that a previous opinion of this office with respect to the distribution of funds from license fees is authority for his position. We do not agree as we can find nothing in the Act which set up the H class counties which makes them municipalities but only refers to power comparable to municipalities.

Mr. Smith further contends that any other construction of the section would be in violation of Article IV, Section 18 of the Constitution of New Mexico. As you well know, it is not the function of this office to declare legislation unconstitutional unless there is no other alternative. We have been unable to find anything in this legislation placing it in that category.

Therefore, it is my opinion that the ordinances above mentioned are within the power of the Board of County Commissioners of Los Alamos County to enact.