

Opinion No. 59-132

August 28, 1959

BY: HILTON A. DICKSON, JR., Attorney General

TO: Mr. A. E. Hunt Director Department of Finance and Administration Santa Fe, New Mexico

{*203} This is in reply to your recent inquiry asking for our opinion regarding the following question:

What unincorporated area may be zoned after the enactment of Senate Bill 261, 24th Legislature, into law as Chapter 271, Laws of 1959?

Section 14-28-9, N.M.S.A., 1953 Compilation, (P.S.), reads as follows:

"14-28-9. BUILDING AND ZONING REGULATIONS AUTHORIZED. -- For the purpose of promoting health, safety, morals or the general welfare of the community, the legislative or governing bodies of **all counties in which located cities having a population of more than twenty-five thousand (25,000) as shown by the last decennial census and of incorporated cities, towns and villages, whether incorporated under general or special acts**, are hereby empowered to regulate and restrict the height, number of stories, and size of buildings, and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and lands for trade, industry, residence or other purposes." (Emphasis supplied)

This section clearly sets up two different classes of governing bodies that may enact zoning regulations in accordance with the act. These classes are (1) governing bodies of counties in which there is located one or more cities having a population of more than 25,000 according to the last decennial census, and (2) the governing bodies of all incorporated cities, towns and villages incorporated under general or special acts no matter where they are located.

The territorial limits of the zoning jurisdiction of counties in which is located a city having a population of 25,000 or more according to the last decennial census is spelled out in the last paragraph of Section 10 of Chapter 271 (14-28-18, supra). This paragraph reads as follows:

"From and after the time when any county shall have established a zoning commission for the purposes provided for in this act (14-2-14 to 14-2-33), the zoning jurisdiction of such county shall immediately attach, extend to and include all territory outside each municipality for a distance of three (3) miles and {*204} not within the corporate limits of any other municipality, and in the case of a city which contains twenty-five thousand

(25,000) or more inhabitants all territory lying within five (5) miles of its corporate limits and not located within any other municipality."

Therefore, in counties having within their territorial limits one or more cities with a population of 25,000 or more according to the last decennial census, after the establishing of a zoning commission, jurisdiction shall immediately attach to those areas up to three miles from the corporate limits of municipalities having a population of less than 25,000 and up to five miles from the corporate limits of cities having a population of 25,000 or more, excluding, of course, the area within the limits of any incorporated municipality.

By: Philip R. Ashby

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