

Opinion No. 61-37

May 8, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

TO: Mr. Charles G. Caldwell, Director, Environmental Sanitation Services, Department of Public Health, Santa Fe, New Mexico

QUESTION

QUESTION

1. Does a District Judge or District Attorney have the power or authority to order a "Domestic Water Consumer Association" to hold a Board of Director's election as provided for in Section 14-40-102, N.M.S.A., 1953 Compilation?

CONCLUSION

See Analysis.

OPINION

ANALYSIS

At the outset we wish to make it clear that Section 14-40-102, N.M.S.A., 1953 Compilation, pocket supplement, specifically provides that each Domestic Water Consumer's Association hold an annual Board of Directors election.

As we understand it, the Association in the Town of Old Mesilla, Dona Ana County, New Mexico, has held no Board of Directors election since March, 1958.

With these points in mind, we will first consider whether a District Attorney has the authority to require such an election. Nowhere in either Sections 17-1-1, et seq., dealing generally with District Attorneys, or in Section 17-1-1, N.M.S.A., 1953 Compilation, dealing specifically with the duties of District Attorneys, do we find any statutory authority for a District Attorney to order such an election. Nor is such obligation or authority imposed or granted in the Sanitary Projects Act providing for the establishment of this type association. Section 14-40-91 through Section 14-40-109, N.M.S.A., 1953 Compilation, pocket supplement. Consequently, we conclude that authority is lacking for a District Attorney to order such an election.

In regard to the authority of the District Court to order that a Board of Director's election be held, this office is of the opinion that we should not presume to state what powers the District Court may or may not exercise.

Since mandamus proceedings may be instituted by a party beneficially interested when the ordinary course of law does not afford a plain, speedy and adequate remedy, it would seem that the best procedural route to follow would be for one or more members of the Association to either mandamus the present Board of Directors to hold a new election or to file for a mandatory injunction. **State ex rel Burg v. City of Albuquerque**, 31 N.M. 576, 249 Pac. 242.

It is the general rule that mandamus will lie to compel the performance by a public body or official of a clear, plain duty. **State v. Board of County Commissioners**, 62 N.M. 137, 306 P. 2d. 259.

Mandamus would seem to be a proper remedy since it appears that a Domestic Water Consumers Association is a local public body for the purposes of regulation under the Sanitary Projects Act, primarily because the Act itself provides for the establishment of such associations, provides for Board of Directors elections and provides for the contribution of State funds to be used as a portion of the initial cost of building the water and sewer facilities.