

Opinion No. 62-17

January 29, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Thomas A. Donnelly, Assistant Attorney General

TO: Mr. Juan Archibeque, County Clerk, Sandoval County, Bernalillo, New Mexico

QUESTION

QUESTIONS

1. May the Board of County Commissioners of Sandoval County, New Mexico, abolish an existing county precinct and annex portions of said precinct into three other existing precincts?
2. What jurisdiction does the Board of County Commissioners possess to enter into and to survey upon Indian lands for purposes of redefining and locating new boundaries of such precincts?
3. What procedure should the Board of County Commissioners follow to abolish an existing precinct and to annex portions of such precinct to another precinct?

CONCLUSIONS

1. See analysis.
2. See analysis.
3. See analysis.

OPINION

ANALYSIS

Under the facts stated in your letter of inquiry, the Board of County Commissioners of Sandoval County, at their last regular session of business, proposed to abolish the existing precinct No. 19 in Sandoval County, and to annex and incorporate such precinct area into three other existing precincts situate in Sandoval County.

As specified in your first question set out above, the Board of County Commissioners has inquired into the legality of the abolishment of an existing precinct located within the county and the proposed redefining of existing county precincts so as to absorb and to incorporate such precinct within the confines of Sandoval County.

Several statutory provisions bear directly upon the authority of the Board of County Commissioners to abolish an existing county precinct. Reference is herein below made specifically to each of these sections.

Section 15-37-17, N.M.S.A., 1953 Compilation, authorizes the Board of County Commissioners of each county to organize or to change the boundaries of any precinct located within the county. This section provides that county commissioners are empowered:

"To set off, organize and change the boundaries of any precinct or township in their respective counties, to designate and give names therefor, and in case of an organization of a new precinct, they shall, within thirty days from the time such precinct was organized, order an election for justice of the peace and constable for such precinct, as provided by law."

Section 15-37-18, N.M.S.A., 1953 Compilation, specifies that:

"The board of county commissioners shall not set off or organize any new precinct unless a petition be first presented to the board, signed by at least fifty (50) citizens, resident within the boundaries of the proposed new precinct; and precincts so created shall be as compact in form, and cover as small an area as practicable, and shall be so established, and their boundaries so fixed, as to serve the greatest convenience of the people therein."

Section 15-37-19, N.M.S.A., 1953 Compilation, provides further that:

"Whenever any board of commissioners shall organize new precincts or demarcations, or alter the boundaries of any precinct or demarcation in their county they shall cause a map and a record thereof to be made by the county clerk, specifying the name and boundaries of such precinct or demarcation, which map and record shall be kept in the office of said clerk and filed with the justice of the peace of such precinct or demarcation."

In addition to the above statutory provisions, Section 15-37-20, N.M.S.A., 1953 Compilation, specifies the duties of the county clerk of each county effecting a change in precinct boundaries or redefining precinct areas. This section sets out:

"The clerk of each county shall, as often as a new precinct or demarcation shall be organized in his county or the boundaries of any precinct or demarcation shall be altered, and immediately thereafter, make out and transmit to the secretary of state a certified statement of the names and boundaries of the precincts and demarcations so organized, and of the boundaries of any precinct or demarcation, the boundaries of which shall have been altered."

Under the above statutory provisions, the board of county commissioners of each county are empowered with the express authority to either create new precincts within the county, or to alter the boundaries of any precinct or demarcation in the county.

As specified under the facts set out above, the board of county commissioners of Sandoval County does not propose to create any new precincts, but to abolish an existing precinct and alter the boundaries of three existing precincts. Under these existing facts and the statutes above cited, it is clear that the board of county commissioners does have the express statutory authority to abolish an existing county precinct and to annex portions of such territory into three other existing precincts if in its discretion such steps are necessary.

Under the facts given, and since the Board of County Commissioners is not creating a new precinct, the provisions of Section 15-37-18, N.M.S.A., 1953 Compilation, *supra*, relative to the necessity for the presentment to the commission of a petition signed by not less than fifty citizens resident in the boundaries of the proposed new precinct, are not applicable in such instance. In such case, as specified in the facts given above, there will be a retention of three adjoining and existing precincts, even though the boundary lines will be altered by reason of the incorporation of portions of the precinct proposed to be abolished.

It should be noted, however, that if the three precincts which will incorporate portions of the precinct to be abolished do not retain their original precinct designations, and in addition, have their boundary lines altered, in such situation, it would appear that the commission may be undertaking to create three entirely new precincts rather than alter the boundary lines of existing precincts, and the receipt of a petition signed by not less than fifty qualified residents within each of such proposed and newly designated precincts would appear to be a condition precedent to the establishment of such new precincts in such event.

In considering your first question above, it is also necessary to look to the provisions of Section 3-2-1, N.M.S.A., 1953 Compilation (PS), which imposes certain limitations upon county commissioners in cases wherein they undertake to abolish a precinct or to alter the boundaries of precincts situate within the county. In our prior Attorney General's Opinion No. 57-240, dated September 24, 1957, and which interpreted Section 3-2-1, N.M.S.A., 1953 Compilation, it was held that such section is a part of the election laws of New Mexico and does not invest the Board of County Commissioners with the power to create new precincts and that when the creation of new precincts is considered by the Board of County Commissioners, they must proceed under the provisions of Section 15-37-17, *et seq.*, N.M.S.A., 1953 Compilation.

Section 3-2-1, N.M.S.A., 1953 Compilation does specify certain restrictions upon boards of county commissioners as to the manner and procedure in which they must follow in abolishing, altering or creating new precincts. This section sets out in part:

" Election Districts. -- At a meeting to be convened no later than the first Monday in December of every oddnumbered year, each board of county commissioners shall, by order entered of record, divide every precinct and voting division in their respective counties where more than six hundred (600) votes were cast at one (1) polling place at the last preceding general election into two (2) or more election districts for voting purposes only, and shall define the boundaries of each of such election districts; and each such district shall be so made that no polling place shall be required to accommodate more than six hundred (600) voters. Such election districts shall be designated respectively as election district A, B, C, etc., of the precinct divided.

The county commissioners shall, by the same order, designate the polling place of each precinct and election district; and the boundaries and places shall be so designated as to be most convenient to the majority of the electors. In the interest of economy, the county commissioners may, in their discretion, consolidate any precinct or voting division where the total vote cast in the preceding general election was less than one hundred (100) ballots, with the nearest and most accessible precinct or voting division; Provided, no consolidation shall be made where the aggregate vote in the last general election in the election divisions thus to be consolidated exceeded six hundred (600) ballots. Each board of county commissioners may meet at any other time not less than four (4) months before each election to divide or abolish precincts or election districts or to change the boundaries thereof or polling places therein.

No precinct or election district shall be abolished or the boundaries or polling place therein changed less than four (4) months before each election, except by order of court in a proceeding as hereinafter provided.

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The provisions of this section as to the duties of county commissioners shall be mandatory, and if any board of county commissioners shall fail or neglect to comply therewith, any qualified elector may without cost file a petition for mandamus in the district court. A hearing in said matter shall be promptly afforded by the district court, and if the allegations of the petition are sustained, the district court shall make an order requiring the board of county commissioners to comply forthwith with said provisions. In such event, all cost of the proceeding shall be taxed against the county commissioners and recovered from the commissioners on their official bond in an action which shall be forthwith brought by the district attorney. The wilful violation by any board of county commissioners of the mandatory provisions of this section shall be a misdemeanor and upon conviction shall be punishable by a fine not exceeding five hundred dollars (\$ 500) or by imprisonment not exceeding ninety (90) days, or both."

Thus, in answer to your first question above, it is clear that when the board of county commissioners comply with the requisites of the above referred to statutory provisions,

such body possesses the legal authority to abolish, alter or create new precincts within such counties.

In respect to your second question set out above, you have inquired as to what jurisdiction the board of county commissioners possesses to enter into and survey upon Indian lands located within the county for purposes of redefining and locating new boundaries for county precincts.

Presumably, your question is based upon the provisions of Section 15-37-19 and 15-37-20, N.M.S.A., 1953 Compilation, supra, which require the Board of County Commissioners when organizing new precincts or altering the boundaries of any precinct, to "cause a map and record thereof to be made by the county clerk, specifying the name and boundaries of such precinct or demarcation", and requiring the county clerk to transmit to the secretary of state a certified statement of the names and boundaries of the precincts newly organized or altered.

In **State v. Begay**, 63 N.M. 409, 320 P. 2d. 1017, the New Mexico State Supreme Court held in part that: "The State of New Mexico lacks jurisdiction over Indian lands within the state until and unless the title of the Indian or Indian tribes shall have been extinguished".

The recent decision of the New Mexico Supreme Court, **Your Food Stores, Inc. v. Village of Espanola**, 68 N.M. 327, 361 P. 2d. 950, (Cert. denied, U.S. Sup. Ct. Repts., 7 L. Ed. 131, 82 Sup. Ct. 194), reiterated that the State has no governmental authority over Indian lands except where such jurisdiction has been specifically granted by an Act of Congress, or sanctioned by decisions of the United States Supreme Court.

Based upon the above decisions, we conclude that without express approval and permission of the governing body of the Indian tribe upon which lands the board of county commissioners seek to enter upon to cause a survey to be made for purposes of establishing boundaries of a county precinct, the board lacks lawful authority for such entry. Under the two decisions, supra, it is patent that if the state lacks jurisdiction over such Indian tribal lands, the counties possess no better standing.

As we read the provisions of Section 15-37-19 and Section 15-37-20, N.M.S.A., 1953 Compilation, supra, while it is incumbent upon the board of county commissioners and the county clerk of each county to cause a map to be made specifying the boundaries of each precinct newly created or altered in its geographical area, it is not mandatory if the precinct boundaries can be accurately described and established by other means than actual survey upon the lands involved, that a survey be made over all the lands involved. It is permissive under the provisions of Sections 15-37-19 and 15-37-20, N.M.S.A., 1953 Compilation, for a county to prepare a map complying with the requirements of these sections, without surveying the entire precinct if the means utilized describe and establish accurately the boundaries delineated.

In your third question above, you inquire what procedure should the board of county commissioners follow to abolish an existing precinct and to annex portions of such precinct to other existing precincts.

Under the statutes above cited, the legal requisites specifying the procedure which must be followed by a board of county commissioners in effectuating such change would be as follows:

(1) The board of county commissioners must by resolution duly approved by a majority of the commission, order the abolishment of the precinct involved and a specific change in the boundaries of existing precincts affected.

(2) The board of county commissioners must cause a map and record of the proposed changes reflecting the exact boundaries of the precinct to be made by the county clerk, specifying the name and boundaries of such precinct. Such map and record must be kept in the office of the county clerk, and a copy of such map and record under seal of the board must be made by the clerk and filed with the justice of the peace of such precinct.

(3) The county clerk must, as soon as the new boundaries of the precinct altered are established, make out and transmit to the secretary of state a certified statement of the names and boundaries of the precincts altered.

(4) Under Section 3-2-1, N.M.S.A., 1953 Compilation, the board of county commissioners may meet for the purposes of changing precinct boundaries and abolishing precincts at any time not less than four months before each election. No precinct may be abolished or the boundaries of a precinct changed less than four months before each election, except by order of the district court after proceedings as specified in Section 3-2-1, N.M.S.A., supra.

As held by this office in Attorney General's Opinion No. 60-67, dated April 12, 1960, precinct boundaries cannot be changed less than four months before any election unless court action is initiated as specified in Section 3-2-1, N.M.S.A., 1953 Compilation.

In view of the statutory provisions cited, it is evident that the board of county commissioners possesses the statutory authority to effect changes in precinct boundaries and to abolish or alter precincts within the county, subject to the time limitations set out in Section 3-2-1, N.M.S.A. and may effectuate such changes if in the discretion of the board such changes are necessary.

It should be noted that a distinction must be drawn between the provisions of Section 3-2-1, N.M.S.A., 1953 Compilation and the provisions of Section 15-37-17, et seq., N.M.S.A., 1953 Compilation, respecting the power of county commissioners to create or alter precincts. In Attorney General's Opinion No. 57-240, dated September 24, 1957, it was pointed out that Section 3-2-1, N.M.S.A., supra, is part of the election laws of this

state and is not compiled as a section dealing with precinct organization. This section concerns itself primarily with the creation of voting districts or divisions within precincts or with the consolidation of precincts for purposes of voting. Except as such statute limits the time during which the county board of commissioners may effect such precinct changes, such does not govern the manner in which precincts may be altered or abolished, and it should be carefully noted that the question of abolishing, altering or creating new county precincts is divorced from the power of counties to fix election districts or divisions under the election code of the State of New Mexico. Under the latter, the board of county commissioners is under an express and mandatory duty to designate the polling place of each precinct and to establish the boundaries of election districts so as to be most convenient to the majority of the electors, as specified in Section 3-2-1, N.M.S.A., 1953 Compilation, *supra*, and for failure to so establish convenient and accessible polling sites and election districts the voters may obtain redress through the courts in proper instances to compel redesignation or realignment of such polling sites or election districts.