

Opinion No. 62-96

July 24, 1962

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

TO: Mr. Abner Schreiber, Assistant District Attorney, P. O. Box 800, Los Alamos, New Mexico

QUESTION

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May Los Alamos County adopt a charter providing for a combined city-county government?

CONCLUSION

No, not until the population within the proposed territorial limits is 50,000, or more.

OPINION

ANALYSIS

In order to answer your question, the Constitution of New Mexico as well as various statutes must be analyzed.

Article X, Section 4 of the State Constitution provides as follows:

"The legislature shall, by general law, provide for the formation of combined city and county municipal corporations, and for the manner of determining the territorial limits thereof, each of which shall be known as a 'city and county,' and, **when organized, shall contain a population of at least fifty thousand (50,000) inhabitants.**"

(Emphasis added)

Pursuant to the enabling authorization contained in the abovequoted Article, the legislature, in 1951, enacted Section 14-12-2, N.M.S.A., 1953 Compilation, which provides that:

"When the total population of any combined municipal organization shall be **at least fifty thousand (50,000) inhabitants**, a city-county government may be organized as hereinafter provided." (Emphasis added)

You state that there is considerable thought along the line that the above - quoted constitutional provision and statute are controlling only "where a city already exists

within the proposed area," and since there is no incorporated city within Los Alamos County, the 50,000 population requirement is not applicable.

While the definitions contained in Section 14-12-1, N.M.S.A., 1953 Compilation lend some support to this contention insofar as § 14-12-2, supra is concerned, there is nothing in the Constitution which indicates that there can be any exception to the population requirement. Consequently, it is our opinion that even if the proposed city-county consolidation is to be achieved under Section 14-13-25, N.M.S.A., 1953 Compilation, the constitutional requirement as to population still must be met.