

Opinion No. 69-74

July 7, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Gary O'Dowd, Deputy Attorney General

TO: Mr. Bill G. Payne, Assistant District Attorney, Box 86, Carrizozo, New Mexico 88301

QUESTIONS

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1. May the County of Lincoln, by ordinance or otherwise, require building permits from persons who desire to build homes, make additions to homes or alter homes, outside of the municipalities but within the County, in absence of a County Zoning Ordinance?
2. Could the County of Lincoln require building permits in the areas outside of municipalities if the County had a proper Zoning Ordinance?

CONCLUSIONS

1. No.
2. Yes.

OPINION

{*114} ANALYSIS

There appears to be no statute which grants to counties in this state the same power to regulate building construction as is granted to municipalities under Section 14-17-5, N.M.S.A., 1953 Compilation. Class H counties and Class A counties are given authority to enact the same type of ordinances as municipalities may enact under Section 15-36-13 and 15-36-26, N.M.S.A., 1953 Compilation. Lincoln County does not fall within either of these classifications, however. Counties in this state, other than Class H and Class A counties, do not have authority to enact ordinances requiring building permits under any of the general powers granted to a county. (See § 15-36-1 through 15-36-4, N.M.S.A., 1953 Compilation.)

The next question is whether the County of Lincoln could require building permits in the areas outside of municipalities if the county had a proper zoning ordinance. Under Section 14-20-1, N.M.S.A., 1953 Compilation, a county is designated as a zoning authority for the purposes of passing zoning regulations within the county. Section 14-

20-2 (A) provides that a county may adopt a zoning ordinance applicable to all or any portion of the territory within the county that is not within a municipality.

Section 14-20-1 (B) (2), supra, provides that a county zoning authority may:

"Regulate or restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land in each district. All such regulations shall be uniform for each class or kinds of buildings within each district but regulation in one district may differ from regulation in another district."

Under Section 14-20-11, N.M.S.A., 1953 Compilation, counties are given the authority to enact ordinances to carry out their zoning authority same as a municipality has. Requiring of building permits is a reasonable method of enforcing zoning ordinances and municipalities have the power under Section 14-17-5, supra, to enact an ordinance requiring building permits.

It is the opinion of this office that a county having proper zoning ordinances may pass ordinances requiring building permits in areas outside of municipalities.