

Opinion No. 71-106

September 2, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Mr. William Henry Mee Attorney New Mexico Legislative Council 334 State Capitol Santa Fe, N.M. 87501

QUESTIONS

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1. Is an A Class County zoning ordinance valid which does not have supporting maps filed with it?
2. Is the filing and authenticating of a zoning map by the county clerk a necessary requirement for a county zoning ordinance to be enforceable?

CONCLUSIONS

1. No.
2. Yes.

OPINION

{*160} ANALYSIS

Section 14-20-12(D), N.M.S.A., 1953 Comp. provides in pertinent part as follows:

"The original copy of the ordinance together with the proof of publication **and supporting maps shall be filed in a book kept for that purpose and authenticated by the signature of the county clerk.** The county clerk shall keep the book together with supporting maps in his office." (Emphasis added.)

The case of **City of Alamogordo v. McGee**, 64 N.M. 253, 327 P.2d 321, dealt with a situation where two ordinances were challenged because of defects in prepassage requirements. One such defect was that the zoning map had not been **published** along with the ordinance. In answer to the contention that strict compliance must be had {*161} in accordance with the zoning ordinances, the court held that substantial compliance suffices.

The court quoted with approval from the case of **Hughes v. City of Carlsbad**, 53 N.M. 150, 203 P.2d 995. In that case the statute required that annexation proceedings be

accompanied by a "survey and plat" of the contiguous area sought to be annexed, and they were not. The court had this to say on the matter of their absence:

"Since a plat represents an ocular view of the result of a survey -- a visual demonstration of the work done -- where every purpose of either a survey or plat has been achieved, as here, we think it would sacrifice substance to form to say there has not been substantial compliance with the statutory requirements in this particular. We hold with the trial judge that there has been."

After noting the authorities both ways on the effect of an omission to **publish** a map, the court in the Alamogordo case said:

"We hold that under the facts here present, **the ordinance, itself, containing such data** on boundaries of the district as each does and referring to a map on file with the city clerk where anyone so desiring can inspect it, every purpose of publishing the map was achieved. It would be to 'sacrifice substance to form' to nullify the ordinance because of this omission . . ." (Emphasis added.)

Finally, the court said:

"We have already held that in the light of what was stated in Ordinance No. 176, itself, as to boundaries of the district and as to existence of a map and where it could be found and inspected at the office of the city clerk, we were not disposed to nullify the ordinance **on account of failure to publish the map.** " (Emphasis added.)

Based on all of the above-quoted language it is our considered judgment that at the very least supporting maps must be filed in a book kept for that purpose and authenticated by the signature of the county clerk. Further, the county clerk must keep the book together with supporting maps in his office. Section 14-20-12, **supra**. Otherwise there is not substantial compliance with the statutory requirements and the zoning ordinance is invalid.

By: Oliver E. Payne

Deputy Attorney General