

## Opinion No. 71-100

August 18, 1971

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** Mr. John Conron Vice Chairman Cultural Properties Commission Planning Office  
Executive Legislative Building Santa Fe, New Mexico 87501

### QUESTIONS

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May a Class B or C County establish historic district by zoning pursuant to the Historic District Act [Sections 14-21-1 through 14-21-5, N.M.S.A., 1953 Comp.]?

#### CONCLUSION

Yes; see analysis.

### OPINION

#### {\*150} ANALYSIS

The Historic District Act [Sections 14-21-1 through 14-21-5, N.M.S.A., 1953 Comp.] was enacted in 1965 to "empower the counties and municipalities of this state with as full and complete powers to preserve, protect and enhance the historic areas lying within their respective jurisdictions as it is possible for this legislature to permit . . ." Section 14-21-2, **supra**.

To achieve this purpose the Act empowers "any county or municipality otherwise empowered by law to adopt and enforce zoning ordinances, rules and regulations" to create a zoning district or districts designating certain areas as historical areas.

Sections 14-20-1 through 14-20-12, N.M.S.A., 1953 Comp. establish each county and municipality as a zoning authority. See Opinion of the Attorney General No. 71-39, dated March 4, 1971. Whether this authority is limited by Section 15-36-35, N.M.S.A., 1953 Comp., as amended by Chapter 129, Laws of 1971, is the question at issue here.

Section 15-36-35, **supra**, reads as follows:

"Class B and Class C counties are granted the same powers to enact ordinances that are granted to municipalities except for those powers that are inconsistent with statutory or constitutional limitations placed on counties, and provided that the enactment of ordinances shall be limited to the following purposes:

- A. prescribing safety regulations and speed limits for county roads;
- B. prescribing legal dump sites and sites for refuse disposal and providing penalties for dumping of refuse at sites other than those prescribed by the ordinance;
- C. providing for county park and recreation commissions, and prescribing their powers and duties;
- D. providing for the control and use of lands in flood plains; and
- E. providing for the disposition of abandoned vehicles."

The mandate in this section appears to restrict counties to the enactment of ordinances limited to the purposes enumerated in the section. However, Section 14-20-1, **supra**, declares a county to be a zoning authority with such powers as are normally associated with zoning authority. This statute, then, seems to conflict with Section 15-36-35, **supra**.

{\*151} A similar problem was posed in Opinion of the Attorney General No. 71-90, dated July 19, 1971, wherein this office determined that B and C Class Counties have authority to enact ordinances for dog control pursuant to Chapter 66, Laws of 1971 (Section 15-36-41, N.M.S.A., 1953 Comp.). That opinion held that in spite of the limitations placed upon county ordinance making powers in Section 15-36-35, **supra**, the more specific grant of power in Chapter 66 (pertaining to dog control) modified an extended Section 15-36-35, **supra**.

The Supreme Court of New Mexico has consistently relied upon the rule as stated in **State v. Lujan**, 76 N.M. 111, 412 P.2d 405 (1966).

"Where a general statute, standing alone, will include the same matter as a special statute and thus conflict with the special statute, the special statute will be considered an exception to the general statute, whether passed before or after the general statute."

See also, **Martinez v. Cox**, 75 N.M. 417, 405 P.2d 659 (1965).

We must arrive at the same conclusion in the instant situation. Here, Sections 14-20-1 through 14, **supra**, granting zoning authority to counties, the special statutes, conflict with Section 15-36-35, **supra**, the general statute. It is our opinion, therefore, that the special statute is an exception to the general statute.

Because counties empowered by law to adopt and enforce zoning ordinances, rules and regulations can create historic districts under the Historic District Act, we must conclude that Class B and C Counties thus empowered can establish historic districts by zoning.

By: Leila Andrews

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