

Opinion No. 71-39

March 4, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Honorable Bruce King Governor State of New Mexico Executive Legislative Building Santa Fe, New Mexico 87501

QUESTIONS

QUESTION

Can a special zoning district exist under Section 14-20-16 N.M.S.A., 1953 Comp. in a county which has adopted a comprehensive zoning plan?

CONCLUSION

Yes, but see analysis.

OPINION

{*56} ANALYSIS

Section 14-20-2, N.M.S.A., 1953 Comp. provides in pertinent part as follows:

"A county zoning authority may adopt a zoning ordinance applicable to all or any portion of the territory within the county that is not within the subdividing and platting jurisdiction of a municipality."

Section 14-20-16, N.M.S.A., 1953 Comp. provides:

"A special zoning district is created in an area outside the boundary limits of an incorporated municipality when:

- A. There are at least one hundred fifty (150) single family dwellings within the area:
- B. At least fifty-one per cent (51%) of the registered electors residing in the area sign a petition requesting a special zoning district; and
- C. The signed petition, along with a plat of the area included with the district, is filed in the office of the county clerk of the county or counties in which the area is situate."

When such a special zoning district is duly created and a zoning commission for the district is elected pursuant to Section 14-20-17, N.M.S.A., 1953 Comp., the zoning

commission has the regulatory powers prescribed in Section 14-20-19, N.M.S.A., 1953 Comp.

Each of the above-quoted zoning statutes was enacted during the same session of the legislature (1965). Section 14-20-2, **supra**, was amended in 1966 but not in a way that affects the provisions applicable here. Section 14-20-2, **supra**, was approved April 8, 1965; Section 14-20-16, **supra**, was {*57} approved March 29, 1965. If there were an irreconcilable conflict between the two, the last one approved would control. But we must keep in mind the following admonition stated in Opinion of the Attorney General No. 63-87, dated July 22, 1963:

"It is a universal rule of statutory interpretation that repeals by implication are not favored. *Mendoza v. Acme Transfer & Storage Co.*, 66 N.M. 32, 340 P.2d 1080. The courts are fully aware that there is no rule of law which prevents the legislature, if it sees fit, from changing its mind during the same legislative session and repealing or amending a provision enacted earlier in the session on a particular subject. *Commonwealth v. Lomas, Pa.*, 153 Atl. 124. However, the disfavor with which courts look upon repeals by implication is based on the presumption that laws are passed with deliberation and with full knowledge of previous legislative action and that generally where a repeal is intended, express terms will be used to accomplish that result. This presumption is especially strong with respect to acts passed at the same legislative session. *State v. Fidelity & Deposit Co. of Maryland*, 36 N.M. 166, 9 P.2d 700.

While statutes passed at the same legislative session must, if possible, be construed together and effect given to each, nevertheless if there be an irreconcilable conflict, it is presumed that the legislature intended the earlier enactment to give way to the later enactment. *State v. Marcus*, 34, N.M. 378, 281 Pac. 454; *Buttorff v. City of New York, Pa.*, 110 Atl. 728. The basis for the doctrine is simply that the later enactment is the last expression of legislative will on the subject."

The two county zoning statutes here under discussion, enacted at the same legislative session, are not irreconcilable. The net effect is that the county and any duly organized "special zoning districts" have concurrent power to zone in their areas of overlapping jurisdiction.

The legislature was aware that zoning "conflicts" might occur. In actuality it was not a matter of conflict in the classical sense that the legislature realized might come to pass; rather it apparently envisioned a situation wherein a county zoning authority would have promulgated proper zoning regulations and then later another zoning authority would also adopt zoning regulations, each purporting to operate in the same geographical area. Accordingly, the Municipal Code at the time of its enactment included not only Section 14-20-2, **supra**, which as we have mentioned was the county zoning authority, but also Section 14-20-9, N.M.S.A., 1953 Comp. which provides as follows:

"Conflicts between zoning regulations and other statutes and ordinances. -- if any other statute or regulation or other local ordinance resolution or regulation adopted

under the authority of Sections 14-20-1 through 14-20-12 New Mexico Statutes Annotated, 1953 Compilation, is applicable to the same premises, the provision shall govern which requires:

- A. The greater width or size of yards, courts or other open spaces;
- B. The lower height of building or a less number of stories;
- C. The greater percentage of lot or land to be left unoccupied;
- D. Or imposes, other higher standards."

The intent of the statute is quite clear. By creating a special zoning district the county zoning is not thereby nullified. Compliance must be had with the regulations of both the county zoning authority and the special zoning commission. If persons in the county who are also in a special zoning district believe the county's zoning regulations are not appropriate in that geographical portion of the county, the county zoning authority should be asked to amend its zoning ordinance.

By: Oliver E. Payne

Deputy Attorney General