

Opinion No. 71-90

July 19, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Mr. Gillie B. Jaramillo Chairman, County Commission Valencia County Courthouse
Los Lunas, New Mexico 87031

QUESTIONS

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Does Valencia County have the authority to enact an ordinance for dog control?

CONCLUSION

Yes.

OPINION

{*130} ANALYSIS

The current general statute defining the broad ordinance powers of Class B and Class C counties in New Mexico, Section 15-36-35, N.M.S.A., 1953 Comp. as amended by the Legislature in 1967, 1969 and 1971, does not allow a Class C county the right to enact an ordinance for the control of dogs. However, the 1971 Legislature enacted a new law specifically allowing any county "the power granted by statute to municipalities to enact ordinances providing for the control of dogs except those powers inconsistent with statutory or constitutional limitations placed on counties" Laws of 1971, Chapter 66, Section 15-36-41, N.M.S.A., 1953 Comp.

Hence the question now before us is whether the more recent and more specific statute or the older general statute is controlling. It would seem, according to **Varney v. City of Albuquerque**, 40 N.M. 90, 55 P.2d 40 (1936), at 92, that the later more specific law should control:

"A statute enacted for the primary purpose of dealing with a particular subject prescribing terms and conditions governing the subject matter supersedes a general statute which does not refer to that subject although broad enough to cover it. This rule of construction is . . . well established. . . ."

The same conclusion would seem to follow from a consistent line of similar judicial decisions:

"Where a statute deals with a subject matter in general terms and another deals with a part of the same subject in a more definite way, the special statute governs." **State v. Spahr**, 64 N.M. 395, 328 P.2d 1093 (1958).

"Where two statutes cover the same subject matter, and one of them does so in general terms and the other in a more detailed way, the two should be harmonized, if possible, and construed together." **State v. Rue**, 72 N.M. 212, 382 P.2d 697 (1963).

"Where a general statute, if standing alone, would include the same matter as a special act, and thus conflict with it, the special act will be considered as an exception or qualification of the general statute." **Martinez v. Cox**, 75 N.M. 417, 405 P.2d 659 (1965).

"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." **State v. Lujan**, 76 N.M. 111, 412 P.2d 405 (1966).

In the question here presented, the more specific statute is also the later statute.

In the light of this well established rule for reconciling general and specific statutes, it would seem that the New Mexico State Legislature, by Chapter 66 of the Laws of 1971, modified and extended Section 15-36-35, N.M.S.A., 1953 Comp. to allow Class C counties the power to enact dog control ordinances.

{*131} Thus in our opinion, Valencia County, as a class C county, has the power in question.

By: Leila Andrews

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