

Opinion No. 74-37

November 7, 1974

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Louis E. DePauli District Attorney Eleventh Judicial District P.O. Drawer 38 Gallup, New Mexico 87301

QUESTIONS

FACTS

An owner of a tract of land located in McKinley County outside the municipal boundary limits of Gallup but within the three mile zone proposes to construct a trailer park thereon and to lease or rent trailer spaces. No extraterritorial zoning commission has been appointed as required by Section 14-20-2.1, NMSA, 1953 Comp. McKinley County has adopted subdivision regulations pursuant to the New Mexico Subdivision Act.

QUESTIONS

- (1) Under these circumstances, does dividing a tract of land into trailer spaces for lease or rent constitute a subdivision under the New Mexico Subdivision Act?
- (2) If so, is this subdivision subject to the McKinley County Subdivision regulations?

CONCLUSION

- (1) Yes.
- (2) Yes.

OPINION

{*75} ANALYSIS

A partial answer to these questions was provided in Opinion of the Attorney General No. 70-84. That opinion, which we adopt here insofar as it is applicable, concluded that land divided into trailer lots which were **leased** did not constitute a subdivision within the meaning of Section 14-19-1, NMSA, 1953 Comp. This answer would be true regardless of whether the land was located within the boundaries of a municipality or within the territory located outside the municipality but within the extraterritorial jurisdiction set forth in Section 14-19-5, NMSA, 1953 Comp. Therefore, under the facts given here, the City of Gallup has no authority to regulate the **lease** or **rent** of trailer spaces located outside the city but within its three mile limit. Therefore, it is irrelevant whether or not an extraterritorial zoning commission has been appointed.

The opinion referred to above also concluded that the leasing of trailer spaces would be subject to the Land Subdivision Act and would constitute a subdivision, as then defined. We approve that general conclusion. However, a new definition of "subdivision" has been promulgated by the legislature. Section 70-5-2 (1), NMSA, 1953 Comp. (1973 P.S.) provides:

"subdivision' means an area of land within New Mexico, the surface of which has been divided by a subdivider into five [5] or more parcels for the purpose of sale or **lease**. Subdivision does not include:

(1) any land retained by the subdivider after subdivision but which has not been divided for a subdivision;

(3) subdivisions within the boundaries of a municipality or which are annexed by a municipality at the time of approval of the subdivision by the municipality;

(4) any division of land in which only gas, oil, mineral or water rights are severed from the surface ownership of the land;

(5) any division of land created by court order, except court orders involving land grant adjudications;

{*76} (6) the leasing of land for grazing or farming activities; or

(7) the alteration of parcel boundaries within a previously approved subdivision where parcels are altered for the purpose of increasing or reducing the size of contiguous parcels and where the number of parcels is not increased nor the type of subdivision changed;" (Emphasis added.)

Section 70-5-27, **supra**, provides in part:

"A. Any person who sells or **leases** land that is part of a subdivision before the plat has been approved [by the board of county commissioners] and recorded, . . . is guilty of a misdemeanor and shall pay a fine of not more than one thousand dollars (\$ 1,000) for each parcel for which a violation occurred." (Emphasis added.)

Our conclusion is that the land in question would qualify as a subdivision within the meaning of Section 70-5-2, **supra**, if there are five or more parcels to be leased for trailer spaces. Further, it would be unlawful for the subdivider of this proposed subdivision to rent or lease the parcels of land as described for trailer spaces without having the subdivision approved by the County Commission of McKinley County. It follows that the McKinley County subdivision regulations apply to this proposed subdivision.

A copy of Opinion of Attorney General No. 70-84 is attached for your information.

By: Ralph W. Muxlow, II
Assistant Attorney General