

## Opinion No. 75-14

February 18, 1975

**BY:** OPINION OF TONEY ANAYA, Ralph W. Muxlow, II

**TO:** Representative Vernon N. Kerr New Mexico State Representative 113 Sherwood Boulevard Los Alamos, New Mexico 87544

### QUESTIONS

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1. Do the provisions of Sections 14-18-1 through 14-18-12, Sections 14-19-1 through 14-19-14.1, and Section 14-20-2.1, NMSA, 1953 Comp. apply to an incorporated county?
2. If the answer to question number 1 is yes, does an incorporated county have the extraterritorial planning, platting, zoning and subdividing jurisdiction of a municipality under Sections 14-18-5, 14-19-5, and 14-20-2.1, **supra**.

#### CONCLUSIONS

1. Yes.
2. Yes, see analysis.

### OPINION

#### {\*51} ANALYSIS

Los Alamos County is an incorporated county by virtue of Article X, Section 5 of the New Mexico Constitution which allows a county to incorporate if its area does not exceed one hundred forty-four [144] square miles. Article X, Section 5, **supra**, states that an incorporated county may exercise ". . . all powers granted to municipalities by statute."

Los Alamos County is also an H class county by virtue of Section 15-43-3.1, NMSA, 1953 Comp. An H class county may include an area of not more than 144 square miles. Los Alamos is both the only incorporated county and H class county in New Mexico. Section 15-36-13, **supra**, gives counties of the H class ". . . all those powers and authorities now or hereafter granted to incorporated municipalities . . ."

Chapter 14, NMSA, 1953 Comp. is designated as the "Municipal Code." Section 14-1-2G, NMSA, 1953 Comp. (1973 P.S.), contains the following definition:

" 'Municipal' or 'municipality' means any incorporated city, town or village, whether incorporated under general act, special act or special charter, **incorporated counties and H class counties.**" (Emphasis added)

The New Mexico Legislature has clearly and unequivocally conferred upon H class counties and incorporated counties the same powers and authorities as have been granted to municipalities under the Municipal Code. New Mexico Constitution, Article X, Section 5, **supra**; Section 15-36-13, **supra**; Section 14-1-2G, **supra**. As if to remove any doubt, the legislature amended Section 14-1-2G, **supra**, in 1973 by adding the term "incorporated counties." In our opinion, therefore, whenever the term "municipal" or "municipality" is used in the Municipal Code, it means and includes "incorporated counties" and "H class counties." It follows that Sections 14-18-1 through 14-18-12, **supra**, Sections 14-19-1 through 14-19-14.1, **supra**, and Section 14-20-2.1, **supra**, apply to incorporated counties and H class counties. Accordingly, Los Alamos County may exercise the extraterritorial jurisdiction of a municipality in the areas of planning, platting, zoning, and subdividing.

The extraterritorial planning and platting authority of a municipality is contained in Section 14-18-5, **supra**. Section 14-15-5, **supra**, creates extraterritorial planning jurisdiction extending three or five miles beyond the boundaries of municipalities depending upon population, except insofar as another municipality may be affected. Los Alamos County may exercise extraterritorial planning jurisdiction even though this jurisdiction extends into surrounding counties because the counties which border Los Alamos County are not "municipalities." Section 14-18-5 (1)(2), **supra**; Section 14-1-2G, **supra**.

The conclusion expressed in the preceding paragraph is not inconsistent with a county's planning jurisdiction, as expressed in Section 15-58-3, **supra**, which states:

{\*52} "Each county shall have exclusive planning jurisdiction within its county boundary except as to any area exclusively within the planning and platting jurisdiction of a municipality and **except as to those areas where a county and a municipality may have concurrent jurisdiction, as now or may hereinafter be provided by law.**" (Emphasis added)

Since Section 14-1-2G, **supra** makes Los Alamos County a "municipality", Los Alamos County may exercise extraterritorial planning jurisdiction under Section 14-18-5, **supra**, concurrently with the counties which border it. Section 15-58-3, **supra**. Since neither a municipality's planning jurisdiction (Section 14-18-5, **supra**) nor a county's planning jurisdiction (Section 15-58-3, **supra**) is exclusive as to the extraterritorial planning area, we conclude this area is one of concurrent jurisdiction. (See also Section 14-19-5 (A)(1), (3) and (C), **supra**.)

Sections 14-19-5, 14-19-6, and 14-19-7, **supra**, relate to county and municipal jurisdiction involving the subdivision and platting of land. Generally, a municipality is given extraterritorial subdivision and platting jurisdiction extending three or five miles

from its boundaries depending upon population. Section 14-19-5 (A) (2), (3) **supra**. Since Los Alamos County is treated as a municipality, Los Alamos County may exercise the extraterritorial subdivision and platting jurisdiction of a municipality. In this extraterritorial area beyond the boundary of Los Alamos County, the county in which the land is situated will exercise **concurrent** jurisdiction with Los Alamos County under Section 14-19-5 (A) (1), (3) and (C), **supra**. If a subdivision is proposed in an area in which there is concurrent subdivision and platting jurisdiction, the proposed subdivision must be approved by both the board of county commissioners in which the land is situated, Section 14-19-6, **supra**, and by the planning authority of the municipality (Los Alamos County) which has jurisdiction for approval. Section 14-19-7, **supra**; Section 14-19-8, **supra**.

The conclusion expressed in the preceding paragraph is consistent with the provisions of the New Mexico Subdivision Act [Sections 70-3-9, 70-5-1 to 70-5-29, NMSA, 1953 Comp. (1973 P.S.)]. Specifically, Section 70-5-29, **supra** states:

"Nothing in the New Mexico Subdivision Act . . . shall be construed as limiting the municipal extraterritorial subdivision and platting jurisdiction provided for in Section 14-19-5 NMSA, 1953."

Section 14-20-2, **supra**, sets forth the jurisdiction of a county or municipal zoning authority. Los Alamos County, pursuant to the powers granted to it, may exercise zoning jurisdiction within its extraterritorial subdivision and platting jurisdiction. See Section 14-19-5, **supra**; Section 14-20-2 (B), **supra**. In order for such extraterritorial zoning jurisdiction to be exercised, however, an extraterritorial zoning commission must be established pursuant to Section 14-20-2.1, **supra**. In areas beyond the boundaries of Los Alamos County but within its extraterritorial zoning jurisdiction, an extraterritorial zoning commission must approve any zoning ordinances adopted by Los Alamos County. An extraterritorial zoning commission consists of appointees of both the municipal zoning authority (Los Alamos County) and {53} the board of county commissioners in which the land is situated. Section 14-20-2.1, **supra**.

Contrary to planning, subdivision and platting jurisdiction, municipal zoning jurisdiction is not a matter of **concurrent** jurisdiction, but it is instead a matter of **exclusive** jurisdiction. Section 14-20-2 (A), **supra**, provides:

"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;"

Since the subdivision and platting jurisdiction of Los Alamos County extends into surrounding counties, that extraterritorial area is excluded from a county's zoning jurisdiction by virtue of Section 14-20-2 (A), **supra**.

In summary, our opinion is that an incorporated county (Los Alamos County) may exercise the extraterritorial planning, platting, subdividing, and zoning jurisdiction of a

municipality. The extraterritorial planning, platting, and subdividing jurisdiction of Los Alamos County may be exercised only concurrently with the adjacent county or counties in which the land subject to extraterritorial jurisdiction may be situated. The extraterritorial zoning jurisdiction of Los Alamos County may be exercised jointly with an extraterritorial zoning commission pursuant to Section 14-20-2.1, **supra**.

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