

## Opinion No. 81-28

November 5, 1981

**OPINION OF:** Jeff Bingaman, Attorney General

**BY:** Jill Z. Cooper, Deputy Attorney General

**TO:** Ms. Anita Hisenberg, Director, State Planning Division, 505 Don Gaspar Avenue, Santa Fe, New Mexico 87503

### FACTS

The Village of Los Ranchos de Albuquerque is an incorporated municipality with a population of approximately 2,700 located in Bernalillo County, a class A county. Los Ranchos de Albuquerque has petitioned the Municipal Boundary Commission for permission to annex a contiguous territory located in a conservancy district.

### QUESTIONS

Does the Municipal Boundary Commission have jurisdiction to consider an annexation petition from the Village of Los Ranchos de Albuquerque?

### CONCLUSIONS

Yes.

### ANALYSIS

With respect to annexations by municipalities in general, Section 3-7-1 NMSA 1978 provides that

"A. There shall be three methods of annexing territory to a municipality:

(1) the arbitration method as provided in Sections 3-7-5 through 3-7-10 NMSA 1978;

(2) the boundary commission method as provided in Sections 3-7-11 through 3-7-16 NMSA 1978; and

(3) the petition method as provided in Section 3-7-17 NMSA 1978.

B. Territory may be annexed to a municipality by any one of the three methods of annexation provided for in Sections 3-7-5 through 3-7-18 NMSA 1978, **and the provisions of this section apply to annexations of all municipalities, except those that are otherwise specifically provided by law .**" [Emphasis added.]

Such a specific exception to Section 3-7-1 is defined by the Metropolitan Boundary Act for Class A Counties, Sections 3-57-1 to 3-57-9 NMSA 1978 which provides for the annexation of territory to municipalities in a class A county. Section 3-57-4 of that Act defines two methods of annexation: by petition to a municipality and by petition to the district court. Section 3-57-4 further provides that no other method shall have application within class A counties.

However, Section 3-57-3(E) of the Act defines a "municipality" as "all municipalities having a population over one hundred thousand and located within a class A county, but only as to that land located within a conservancy district." This definition would restrict the applicability of the Act to only those municipalities in a class A county with a population greater than 200,000 petitioning for annexation of territory located in a conservancy district. No municipality in a class A county which has a population of less than 100,000 or which is annexing territory located outside of a conservancy district would be subject to this Act.

Moreover, statutes may not be construed to defeat the intended objective of the legislature. **State v. Garcia**, 93 N.M. 51, 596 P.2d 264 (1979). The legislative intent expressed by the plain language of Section 3-7-1 is that **all** municipalities are authorized to annex territory by one of the methods prescribed therein unless another method is "specifically provided by law."

Consistent with this intent, Section 3-57-4 defines the methods which must be used by municipalities subject to the Metropolitan Boundary Act for Class A Counties. To apply Section 3-57-4 as an absolute prohibition against annexations by any municipality in a class A county other than those with a population of more than 100,000 attempting to annex land in a conservancy district defeats the legislative objective of defining for **all** municipalities appropriate methods of annexation.

The definition of "municipality" was added to the Metropolitan Boundary Act for Class A Counties in the same bill which added the underscored portion of Section 3-7-1(B). Laws 1979, Chapter 159. Thus, at the same time the legislature restricted the applicability of the Metropolitan Boundary Act for Class A Counties, it provided that municipalities in class A counties excluded from the Act would be subject to Sections 3-7-1. Statutes passed at the same session and pertaining to the same subject matter should be construed with reference to each other. **State v. Clark**, 80 N.M. 340, 455 P.2d 844 (1969).

The question here is one of jurisdiction and does not address the merits of the proposed annexation. It is left to the discretion of whatever authority considers the petition to determine whether the territory may be annexed by the municipality. See, e.g., Sections 3-7-10, 3-7-15, 3-7-17 NMSA 1978. As a matter of jurisdiction, neither Section 3-7-1 nor the Metropolitan Boundary Act for Class A Counties may be construed to deprive a municipality of the opportunity to at least petition for annexation.

In summary, the Metropolitan Boundary Act for Class A Counties does not, by its own terms, apply to the Village of Los Ranchos de Albuquerque. That Act cannot therefore operate to prohibit Los Ranchos de Albuquerque from petitioning for annexation to the Municipal Boundary Commission as provided by Section 3-7-1.

**ATTORNEY GENERAL**

Jeff Bingaman, Attorney General