

Opinion No. 81-26

October 19, 1981

OPINION OF: Jeff Bingaman, Attorney General

BY: Jill Z. Cooper, Deputy Attorney General

TO: Representative Tandy L. Hunt, 909 N. Kentucky, Roswell, New Mexico 88201

QUESTIONS

May a county, by resolution rather than ordinance, impose criminal sanctions against persons whose cattle are found grazing on open range?

CONCLUSIONS

No.

ANALYSIS

The control of livestock within the county is a permissible exercise of the police power. See, e.g., **Mitchell et al. v. City of Roswell**, 45 N.M. 92, 111 P.2d 41 (1941). A county is generally authorized to exercise its police powers by the adoption of ordinances pursuant to Section 4-37-1 NMSA 1978, which provides that:

"All counties are granted the same powers that are granted municipalities except for those powers that are inconsistent with statutory or constitutional limitations placed on counties. Included in this grant of powers to the counties are those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of any county or its inhabitants. The board of county commissioners may make and publish any ordinance to discharge these powers not inconsistent with statutory or constitutional limitations placed on counties."

County ordinances are enacted by the commission after notice and publication, Section 4-37-7 NMSA 1978; in a form prescribed by the commission, Section 4-37-5 NMSA 1978; to take effect thirty days after being properly recorded, Section 4-37-9 NMSA 1978. An ordinance may be enforced by fine or imprisonment as provided by Section 4-37-3 NMSA 1978. No similar procedure, however, is defined for the adoption of a resolution nor is a county authorized to enforce a resolution by criminal penalty.

An ordinance is a legislative act which, as a rule, is "adopted with all the legal formality of a statute." **City of Sausalito v. County of Marin**, 12 Cal. App. 3d 550, 90 Cal. Rptr. 843, 853 (1970). A resolution is not a legislative act, but rather a statement of policy

governing operation or procedure. See, **Joiner v. City of Dallas** , 380 F. Supp. 754, **aff'd** , 419 U.S. 1042, **rehearing denied** , 410 U.S. 1132 (1974).

Accordingly, should a county commission wish to enforce a prohibition against cattle grazing on open range, it must do so by a properly adopted ordinance and not by resolution. A resolution does not have the force of law. See, **King County Council v. Public Disclosure Commission** , 93 Wash.2d 559, 611 P.2d 1227 (1980).

ATTORNEY GENERAL

Jeff Bingaman, Attorney General