

**Opinion No. 87-55**

September 9, 1987

**OPINION OF:** HAL STRATTON, Attorney General

**BY:** Scott D. Spencer, Assistant Attorney General

**TO:** Honorable Ray M. Vargas, State Representative, 1016 Lomas N.W., Albuquerque, New Mexico 87102

**QUESTIONS**

1. Is it legally permissible to consolidate one county with another?
2. If it is legally permissible to consolidate one county with another, must they be contiguous?
3. If they must be contiguous, are there priorities that among counties must be considered?
4. If there are priorities among and between counties what considerations must be taken into account?
5. Whether a county may be abolished as a county?
6. If a county can be abolished what entity may take its place?
7. As to all the foregoing, what procedures are required for each?

**CONCLUSIONS**

1. Yes. Counties may be consolidated or a portion of a county may be annexed to another.
2. Yes.
3. No. The petition or resolution must, however, set out the boundaries of the county to be annexed.
4. See answer to question 3.
5. Yes, Upon consolidation, the affected counties would merge. However, a special law to abolish a particular county would be unconstitutional, but the legislature could establish general procedures for abolishing counties.

6. See answer to question 5.

7. See analysis.

## **ANALYSIS**

Questions 1 & 7: Section 4-37-1 NMSA 1978 provides as follows:

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 and convenience of any county or its inhabitants.

Section 3-5-1 NMSA 1978 sets forth procedures for the consolidation of municipalities. There are no such specific statutory procedures governing consolidation of counties. It is therefore our opinion that two or more counties also possess the authority to consolidate in accordance with Section 3-5-1.

In applying that section to county consolidations, it is our opinion that the following procedures must be followed:

1. The counties must be contiguous.
2. The county commission of each county must appoint three commissioners who must prepare the terms for consolidation and submit those terms to the respective county commissions. If each county commission approves the term for consolidation it must adopt an ordinance declaring its approval of the terms for consolidation and must provide for an election on the question of consolidation.
3. If the majority of the votes cast in each county favor consolidation, the governing body of each county shall declare by ordinance that consolidation has been approved between the counties and proceed to consolidate under the terms for consolidation.
4. The municipal clerk of each county shall notify the secretary of finance and administration and the secretary of taxation and revenue that the electorate has approved the consolidation. If the question of consolidating the counties fails to receive a majority vote favoring consolidation in any one of the counties the consolidation shall fail.
5. Certified copies of the entire proceedings for consolidation must be filed with the clerks of both counties and the secretary of state. When this filing has been done, the consolidation is complete.

Section 4-33-10 NMSA 1978 provides for the distribution of outstanding indebtedness when an entire county is absorbed into another county already existing.

In addition to the consolidation procedures discussed above, Section 4-33-1 to 4-33-17 NMSA 1978 provide for annexation of portions of counties. The Supreme Court of New Mexico held those provisions to be constitutional in *Crosthwait v. White*, 55 N.M. 71, 226 P.2d 477 (1951). Section 4-33-1 NMSA 1978 provides as follows:

Whenever, because of the location and conditions of roads, or the existence or nonexistence of transportation facilities, it will be more convenient for the residents of any portion a county to travel to the county seat of some other contiguous county, and because of such location and condition of roads or the existence or nonexistence of transportation facilities, it will be more convenient and economical for such other county to render governmental services to such portion of such other county, the portion of the county so affected may be annexed to such other county in the following manner.

The only grounds for annexing a portion of a county to another county are that: (i) it would be more convenient for the residents of a portion of a county to travel to the county seat of some other contiguous county because of location and conditions of roads or the existence or nonexistence of transportation facilities; and (ii) that it would be more convenient and economical for such other county to render governmental services to such portion of such other county because of the location and conditions of roads or the existence or nonexistence of transportation facilities. There are no statutory procedures allowing annexation of a portion of a county with another merely because of economic conditions. Section 4-33-2 NMSA 1978 provides that, to begin the annexation process, at least fifty-one percent of the qualified electors residing within the portion of the county proposed to be annexed must execute a petition to be filed with the county commissioners of the county in which such portion is located.

The petition must set forth the facts showing the existence of the conditions described in Section 4-33-1 NMSA 1978 and accurately must set out the boundaries of the portion of the county proposed to be annexed. Section 4-33-17 NMSA 1978 provides that, if there are no qualified electors residing within the portion of the county proposed to be annexed by another county, the county commissions of both affected counties must pass a resolution approving a transfer of territory from one county to the other. Section 4-33-3 NMSA 1978 provides that, immediately upon filing of such a petition, the county commissioners with whom such petition is filed must publish notice in a newspaper of general circulation in each county affected. Within 30 days after the publication of such notice, any resident of either of the counties affected may bring an action in the district court of the county in which such area proposed to be annexed is located alleging that the requisite number of signers has not executed the petition, that the description of the area to be annexed is not described accurately, or that the conditions set forth in Section 4-33-1 NMSA 1978 do not exist.

Even if no contest is filed, the proponents of the proposed annexation must file a cause of action in the district court of the county where the annexation proceedings are pending, and the court then must determine whether jurisdictional grounds for the annexation exist. *Youree v. Ellis*, 58 N.M. 30, 265 P.2d 354 (1954). The Supreme Court has upheld the rejection of such a petition because the facts did not support the

necessary findings contained in Section 4-33-1. *Stone v. Crenshaw*, 56 N.M. 707, 248 P.2d 822 (1952). After hearing and determination, the county commissioners must call an election within 30 days within the county of the area proposed to be annexed. Section 4-33-4 NMSA 1978 sets forth the question to be on the ballot and provides that the county commissioners shall name three election judges. Section 4-33-5 NMSA 1978 provides that the county commissioners must meet and canvass the votes within three days after the election, and if the majority of those voting have voted for the annexation, the area described in the petition shall be annexed to the other county described in said petition.

Section 4-33-6 NMSA 1978 provides that, if the proposition carries, the area described in the petition becomes a part of the county to which annexation was made on January 1 of the next odd-numbered year. Section 4-33-8 NMSA 1978 provides for the continuation of debt liability of the county annexed. Subsequent provisions discuss the collection of taxes, continuation of court jurisdiction, and transcription of records when a new county has been created. Once an election is held and the issue of annexation is passed, annexation becomes effective automatically on January 1 of the next odd-numbered year.

Section 4-33-17 NMSA 1978 provides that, if there are no qualified electors residing within the portion of a county proposed to be annexed by another county, the county commissions of both affected counties shall pass resolutions approving the transfer of territory from one county to the other. The resolution shall state the facts permitting such transfer by this method and a description of the territory to be transferred. The county clerks must submit a copy of each resolution to the Secretary of State. Any aggrieved property owner or qualified elector within the annexed territory may file an action in the district court challenging the annexation. If no action is filed within 90 days, the transfer of the territory is effective on January 1 of the next odd-numbered year pursuant to Section 4-33-7 NMSA 1978.

Question 2: Section 3-5-1 provides for the consolidation of "two or more contiguous municipalities." It is our opinion that counties desiring to consolidate also must be contiguous. Assuming that a petition for annexation of a portion of a county has been presented properly and has survived court scrutiny, Sections 4-33-1 NMSA 1978 also provide only for annexation to a "contiguous county".

Questions 3 & 4: The laws providing for annexation or consolidation of portions of counties provide no "priorities" among contiguous counties. As set forth above, the petition accurately must set out the boundaries of the county proposed to be annexed and must state to which county the residents desire to be annexed. The resolutions providing for consolidation must also include within their terms the counties to be consolidated.

Questions 5 & 6: Article IV, section 24 of the New Mexico Constitution prohibits the legislature from passing local or special laws "changing county lines, except in creating new counties." In *State ex rel. Dow v. Graham*, 33 N.M. 504, 270 P. 897 (1928), the

Supreme Court of New Mexico held unconstitutional a law attempting to abolish Catron County and changing the boundaries of Socorro County and Grant County to include the land contained in Catron County. See Chapter 185, Laws of 1927, the Supreme Court found that law to be a special law changing county boundaries in violation of article IV, section 24 of the New Mexico Constitution.

Chapter 185, Laws of 1927 was entitled:

An act creating the county of Rio Grande, and providing for the government thereof, and the payment of its indebtedness, and the county of Catron, and changing the north boundary line of the county of Grant, and providing for the ascertainment and payment of the indebtedness of said county of Catron.

The Act was made effective June 30, 1928, upon which date Catron County would pass out of existence and all of its records, monies, assets, and property would be delivered to the person entitled to receive them in Rio Grande and Grant Counties. 33 N.M. at 505, 270 P. at 898. The Attorney General of New Mexico filed suit, contending that Chapter 185, Laws of 1927 violated article IV, section 24 of the state constitution and was therefore void. The Supreme Court agreed and stated: "The Act is admittedly local or special. It obviously changes county lines. Therefore, upon the face of the constitutional limitation, the act is void unless a new county has been created." 33 N.M. 504, 270 P. 897. The Supreme Court then rejected the argument that Rio Grande County would be a new county, because the law's actual effect was to abolish one county and change other county boundaries by absorption.

A special statute is one that applies to particular persons or things of the class, is made for individual cases or for less than a class of persons or of things requiring laws appropriate to its peculiar conditions and circumstances. *City of Raton v. Sproule*, 78 N.M. 138, 429 P.2d 336 (1967); *State v. Atchison, Topeka and Santa Fe Railway*, 20 N.M. 562, 151 P. 305 (1915). A general law is one that applies to a subject of a general nature, or that effects all of the people of the state or all the people or things in a particular class. *State v. Atchison, Topeka and Santa Fe Railway*, supra. The legislature would be prohibited from passing a special law that would in effect or specifically abolish a county. When two or more counties consolidate under a general statute, however, they effectively are abolished, and a new entity would emerge.

## **ATTORNEY GENERAL**

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