

August 14, 2024

OPINION
OF
RAÚL TORREZ
Attorney General

Opinion No. 2024-10

To: The Honorable Roberto “Bobby” J. Gonzales, State Senator, District 6;
The Honorable Kristina Ortez, State Representative, District 42;
The Honorable Susan K. Herrera, State Representative, District 41

Re: Attorney General Opinion – Traditional Historic Community Annexation

Question

Under what conditions may a municipality annex territory within the boundaries of a traditional historic community (“THC”)? Specifically, is the Town of Taos (“the Town”) barred from annexing any land within the Las Comunidades Del Valle De Los Ranchos Traditional Historic Community (“Los Ranchos THC”) without a petition by a majority of the qualified electors within the THC?

Answer

A traditional historic community shall not be annexed by a municipality unless annexation is considered by the petition of a majority of the qualified electors within the THC. NMSA 1978, § 3-7-1.1 (2019). The plain language of the statute does not allow for any alternative method of annexation. The Town would therefore be barred from annexing any land within the Los Ranchos THC in the absence of a petition meeting the requirements of Section 3-7-1.1.

Background

A THC is defined by statute as an identifiable community with a distinctive character or traditional quality that: (1) can be distinguished from surrounding areas or new developments, (2) has existed for more than 100 years in an unincorporated area of a county, and (3) has been declared a THC by county ordinance by the board of county commissioners where the petitioning community is located. Section 3-7-1.1(A). At least five THCs have been established in New Mexico by county ordinance, three in Santa Fe County and two in Taos County. In December 2022, the Los Ranchos THC was established pursuant to Section 3-7-1.1 by Taos County Commission ordinance 2022-5.

Earlier this year a single landowner petitioned the Town for annexation of a parcel located within the Los Ranchos THC that touches Town boundaries. The Town’s City Council denied the landowner’s petition after a public hearing during which the landowner and Town staff supported annexation and residents of the THC opposed it. Various State Legislators now request an Attorney General Opinion on whether New Mexico law authorizes the annexation of land within the Los Ranchos THC absent the filing of a petition from a majority of all qualified electors in the THC.

Analysis

Under New Mexico law, the annexation of a THC is allowable “*only* by petition of a majority of the qualified electors of the territory within the traditional historic community proposed to be annexed by the municipality or by the arbitration method of annexation only upon petition of a majority of the qualified electors of the territory within the traditional historic community.” Section 3-7-1.1(B) (emphasis added). The statute does not authorize any other method to annex land within the boundaries of a THC. Given the clear and unambiguous wording of the statute, to allow annexation of a THC, or even a portion of its land, by any alternative method would be contrary to the procedures established in Section 3-7-1.1. *See State v. Rivera*, 2004-NMSC-001, ¶ 10, 134 N.M. 768, 82 P.3d 939 (stating “when a statute contains language which is clear and unambiguous, we must give effect to that language and refrain from further statutory interpretation” (alteration, internal quotation marks, and citation omitted)).

Notably, Section 3-7-1.1 requires a petition from the majority of the qualified electors of the THC, whether annexation is considered by direct petition *or* by petition seeking annexation by the arbitration method. “As used in all other statutes and rules of New Mexico, unless otherwise defined, ‘qualified elector’ means a ‘voter’ as that term is defined in [NMSA 1978,] Section 1-1-5 [(2019)].” NMSA 1978, § 1-1-4(B) (2019). A “voter” is “any qualified elector or federal qualified elector who is registered to vote under the provisions of the Election Code.” Section 1-1-5. As such, the law requires that either of the petitions contemplated under Section 3-7-1.1 must come from the voters within the THC itself.¹

In this case, it does not appear that a “majority of the qualified electors” of the Los Ranchos THC has filed a petition for annexation in connection with either of the allowable statutory methods. Because the plain language of Section 3-7-1.1 specifically limits annexation to one of these two methods, it would be impermissible for the Town to annex any part of the Los Ranchos THC by any alternative method. *Cf.* NMSA 1978, § 3-7-17 (1998) (permitting annexation by petition of the owners of contiguous territory). Annexation absent the requisite petition would violate the plain language of Section 3-7-1.1 and would therefore be unlawful.

¹ The reasoning behind developing a THC is to maintain its traditional cultures and unique character of a specific and identified community. To be able to annex part of the community, without support of the majority of the qualified electors of the THC, goes against the very rationale of designating THCs. THC status allows community members to maintain their longstanding local, rural, and traditional roots and combat unwanted changes that may potentially come with annexation. Will Hooper, *Ranchos De Taos ‘Historic Community’ Designation Sought*, TAOS NEWS, Apr. 1, 2021, https://www.taosnews.com/news/local-news/ranchos-de-taos-historic-community-designation-sought/article_c384a324-931f-11eb-bdff-536e955b7988.html.

Conclusion

Section 3-7-1.1 clearly establishes the exclusive procedures to annex a THC, requiring a petition by the majority of the qualified electors of the THC either directly or through the arbitration process. In this case, the Town may not annex any land within the Los Ranchos THC without adhering to the process established in Section 3-7-1.1.

Please note that this opinion is a public document and is not protected by the attorney-client privilege. It will be published on our website and made available to the general public.

RAÚL TORREZ
ATTORNEY GENERAL

/s/ Seth C. McMillan
Seth C. McMillan
Deputy Solicitor General