

January 26, 2004: Ability of Residents to Secede from a City

VIA FACSIMILE AND REGULAR MAIL

The Honorable Joseph J. Carraro

State Senator

10216 Carraro Place NW

Albuquerque, NM 87114

Re: Opinion Request – Ability of Residents to Secede from a City

Dear Senator Carraro:

You requested our advice regarding the ability of a city's residents to secede from the city. Your request pertains in particular to residents of the West Side of Albuquerque in Bernalillo County. You asked us to address whether the following options were available under current laws:

1. formation of a new county;
2. secession of West Side residents from Albuquerque to become an unincorporated community within Bernalillo County;
3. formation of a new municipality within the new or existing county; and
4. annexation by a neighboring city such as Rio Rancho.

After a full review, we conclude that, as discussed below, New Mexico law does not currently permit residents to secede from a city and would not allow residents of the West Side of Albuquerque to effectively secede under the options you describe. As a result, the option of secession would appear to require new statutory authorization.

1. Formation of a New County

The state legislature has exclusive authority to create political subdivisions, including new counties. See Allstate Leasing Corp. v. Board of County Comm'rs, 450 F.2d 26, 28 (10th Cir. 1971) (a "county in New Mexico is the creation of the state and derives all of its powers therefrom"); State ex rel. Witt v. State Canvassing Bd., 78 N.M. 682, 689, 437 P.2d 143 (1968) (political subdivisions, such as counties and cities, are "subordinate governmental instrumentalities created by the State..." (citations omitted)). Historically, the legislature has created new counties by specific legislation. See NMSA 1978, ch. 4, arts. 1-32. See also N.M. Const. art. IV, § 24 (constitutional prohibition against local or special laws that locate or change county seats or change county lines

“except in creating new counties”). There is no current state law allowing residents within an existing county to form a new county on their own initiative.

2. Secession from Albuquerque

Absent enabling legislation, residents of the West Side of Albuquerque may not secede from the city and become a separate, unincorporated community within Bernalillo County. At this time, no such legislation exists. [\[1\]](#)

3. Formation of a New City

Municipalities, like counties, “exist only by virtue of statutory creation.” Sanchez v. City of Santa Fe, 82 N.M. 322, 323, 481 P.2d 401 (1971). Under New Mexico law, residents of a territory form a municipality by following the statutory provisions for incorporation. See NMSA 1978, ch. 3, art. 2. Those provisions expressly preclude an area within the boundary of a municipality from being incorporated as a separate municipality. NMSA 1978, § 3-2-2(A)(1) (1999). Thus, because residents of the West Side are within the boundary of Albuquerque, they may not effectively secede by forming a new city.

4. Annexation by a Neighboring City

The West Side of Albuquerque cannot be annexed by a neighboring city. Under current law, no municipality may annex territory within the boundary of another municipality. NMSA 1978, § 3-7-3 (1965).

If we may be of further assistance, please let us know. Your request to us was for a formal Attorney General's Opinion on the matters discussed above. Such an opinion would be a public document available to the general public. Although we are providing you our legal advice in the form of a letter instead of an Attorney General's Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the public.

Sincerely,

Elizabeth A. Glenn

Assistant Attorney General

cc: Stuart M. Bluestone, Chief Deputy Attorney General

[1] A portion of a county may be annexed to another county under certain circumstances. See NMSA 1978, ch. 4, art. 33. However, even if the West Side of Albuquerque met the statutory requirements and was annexed to another county, the West Side would remain part of the City of Albuquerque.