

Opinion No. 44-4575

September 13, 1944

BY: C. C. McCULLOH, Attorney General

TO: Honorable Claron E. Waggoner, Socorro, New Mexico

We are in receipt of your letter of September 7, 1944 and the enclosed letter from W. E. Lipsey, Catron County Commissioner. In these letters two questions are propounded first, whether the grant of a franchise by county commissioners for the operation of a public utility in an unincorporated town is valid and second, whether county commissioners may grant a renewal of a franchise prior to a termination of an old franchise.

In answer to your first question I observe that there is no statute specifically authorizing the County Commissioners to grant franchises. However, this power apparently was recognized in *Agua Pura Company vs. Mayor and Board of Aldermen*, 10 New Mexico, 6, wherein the court upheld a contract entered into by the Board of county commissioners with a public utility, in fact giving it a franchise to operate a public utility in the unincorporated town of Las Vegas. This was done under the general provision vesting in the county power to make contracts and do all other acts in reference to the property and concerns necessary to the exercise of its corporate or its administrative powers. The fact that an unincorporated town has indefinite limits would not impair the validity of a franchise in my opinion, since the franchise could be granted to operate within the limits of definite boundaries made by reference to natural monuments.

In answer to your second question, please be advised that I have been unable to find cases dealing with this case. However, generally speaking the officers of a county have no power to make a contract or do other acts to be performed after the termination of their term of office. (15 C.J. 541). However, it does not seem to me that this would be necessary in the present instance, since the county commissioners and present franchise holder could terminate the present franchise by mutual consent and the county commissioners could then grant a franchise for the desired length of time.

Trusting the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD,

Asst. Atty. General