

Opinion No. 46-4915

June 26, 1946

BY: C. C. McCULLOH, Attorney General

TO: Robert W. Reidy Assistant District Attorney Second Floor Court House
Albuquerque, New Mexico

{*242} We are in receipt of your letter of June 19, 1946 in which you propound the following question:

"Does the Board of County Commissioners of Bernalillo County have the authority and the power to grant an exclusive franchise to a water corporation for the supply and distribution of water to the inhabitants of a certain locality within the County and outside the corporate limits of the City of Albuquerque?"

Section 15-3401 provides in part as follows:

"Each organized county in this state shall be a body corporate and politic and as such shall be empowered for the following purposes:

* * *

4. To make all contracts and do all other acts in reference to the property and concerns necessary to the exercise of its corporate or administrative powers."

Section 15-3501 provides:

"The powers of a county as a body politic and corporate shall be exercised by a board of county commissioners."

Based on these sections which have remained unchanged, the Supreme Court, in the case of Agua Pura Co. v. Mayor, 10 N.M. 6, 60 Pac. 208, held that the board of county commissioners had the power to grant a franchise to a water corporation to operate in an area not within a municipal corporation.

I fail to find any later enactment which specifically or by necessary implication modifies this power. Certainly there is nothing in the general law authorizing the incorporation of municipalities which limits the power of the county in areas outside of the municipal corporation.

In view of the foregoing, since counties once had the power to grant franchises and since nothing has been done to take that power from them, it is my opinion that the board of county commissioners of Bernalillo County have the authority to grant a

franchise to a water corporation to operate outside the corporate limits of the city of Albuquerque.

By ROBERT W. WARD,

Asst. Atty. General