

## **Opinion No. 62-49**

March 23, 1962

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Marvin Baggett, Jr., Assistant Attorney General

**TO:** Mr. Walter R. Kegel, District Attorney, First Judicial District, P. O. Box 2081, Santa Fe, New Mexico

### **QUESTION**

#### QUESTION

Does Section 64-18-3.1, N.M.S.A., 1953 Compilation, with respect to local authorities establishing speed limits by ordinance, apply to counties which do not otherwise have ordinance-making power?

#### CONCLUSION

No.

### **OPINION**

#### ANALYSIS

Section 64-18-3.1, N.M.S.A., 1953 Comp., grants to local authorities "within their respective jurisdictions", the authority to change by ordinance, subject to certain limitations set forth therein, the speed restrictions upon streets and highways within their limits set by Sec. 64 - 18 - 1.1, N.M.S.A., 1953 Comp. This latter section establishes speed limits throughout the state for various types of vehicles under varied conditions.

Subsection "D" of Sec. 64-18-3.1, N.M.S.A., 1953 Comp., requires the approval of the State Highway Commission for modifications by local authorities of speed limits on state highways or extensions thereof within local boundaries.

The definitions of "highway" and "state highway" are found in Sec. 64 - 14 - 16, N.M.S.A., 1953 Comp. A "highway" is defined as "The entire width between the boundary lines of every way of whatever nature between any part thereof which is open to the use of the public, as a matter of right, for purposes of vehicular travel."

A "state highway" is defined as "Any public highway which has been designated as a state highway . . ."

Thus, the Legislature has included, within the scope of authority of local authorities to modify the speed restrictions comprehensively set forth in Sec. 64-18-1.1, N.M.S.A., 1953 Comp., all public roads lying within the local authority's boundaries.

However, "local authorities", are defined by Sec. 64-14-15, N.M.S.A., 1953 Comp., as "Every county, municipal, and other local board or body **having authority to enact laws relating to traffic under the Constitution and laws of this state.**" (Emphasis supplied). Thus, the grant of authority to local authorities to modify the state law restricting speed must be confined to those bodies having ordinance-making authority under our law, and counties, with the exception of Class "A" and Class "H" counties do not possess such authority.

We must answer your question in the negative.