

## **Opinion No. 64-16**

February 13, 1964

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Thomas A Donnelly, Assistant Attorney General

**TO:** Mr. J. J. Montoya, Chairman, Board of County Commissioners, Taos County, Taos, New Mexico

### **QUESTION**

#### **QUESTIONS**

1. What persons may properly petition for the creation of an incorporated village?
2. Who may vote on the issue of whether or not a village is to become incorporated?
3. Can the board of county commissioners properly allow an extension of time to individuals or groups favoring or opposing such incorporation?
4. Would owners of real estate situate within the confines of an incorporated village be subject to a special tax levy if they voted against such incorporation or if they reside outside the limits of the incorporated village?
5. Do county commissioners have a limited time in which to render a decision for or against such incorporation?
6. May both husband and wife sign a petition for incorporation of a village?

#### **CONCLUSIONS**

1. Inhabitants of the state who are owners of real estate and who reside within the area to be included in the proposed incorporated village, and who are not delinquent in the payment of their property taxes may sign such petition.
2. The statutes make no provision for the conducting of an election upon such issue and such incorporation may be effected upon the filing of a valid petition containing the requisite number of signatures of qualified persons and upon declaration of the board of county commissioners as provided by law.
3. See analysis.
4. See analysis.
5. See analysis.

6. See analysis.

## OPINION

### ANALYSIS

In your first question inquiry is made as to what persons may properly petition for the creation of an incorporated village. This question is governed by the provisions of Section 14-4-1 N.M.S.A., 1953 Compilation, which sets out in part as follows:

"Whenever the inhabitants of any part of this state not embraced within the limits of any incorporated city, town or village shall desire to be organized into an incorporated village, they may apply by petition in writing, signed by not less than sixty per cent of the owners of real estate proposed to be included within the incorporated village and who reside within such territory, to the board of county commissioners of the county wherein such proposed village is situated, which petition shall have annexed thereto an accurate map or plat thereof. The board of county commissioners shall determine from the tax rolls of the county whether sixty per cent of the owners of real estate located in such territory who are not delinquent in their property taxes have signed the petition."

As set out in the above statute only those inhabitants of the state who are owners of real estate and who reside within the area to be included in the proposed incorporated village, and who are not delinquent in the payment of their property taxes may sign such petition.

Your second question posits the issue of who may vote on the issue of whether or not a village is to become incorporated. Careful reference to the provisions of Section 14-4-1, supra, and Section 14-4-3, N.M.S.A., 1953 Compilation, indicates that the statutes make no provision for the conducting of an election upon such issue and valid incorporation may be effected upon the filing of a proper petition signed by not less than sixty percent of the owners of real estate located in the territory proposed to be incorporated, and when the board of county commissioners of the county wherein the area is situated has acted upon such petition, examined the signature to determine their genuineness, caused a census survey to have been made, obtained a survey of the boundaries of the proposed village by the county surveyor, determined that the provisions of Section 14-4-1 and 14-4-2, N.M.S.A., 1953 Compilation, have been complied with in full, and officially declared the proposed village to be an incorporated village.

The third question above asks if the board of county commissioners may properly allow an extension of time to individuals or groups favoring or opposing such incorporation. In our opinion this question is controlled by the provisions of Section 14-4-3 N.M.S.A., 1953 Compilation. This section sets out in part:

"When a petition as provided for in section 14-4-1 and 14-4-2, New Mexico Statutes Annotated, 1953 Compilation is presented to the board of county commissioners at

either a regular or special meeting of the board it shall be filed by the clerk to be finally acted upon at the next regular meeting or a special meeting of the board of county commissioners called for that purpose, whichever occurs first. If the commissioners are satisfied with genuineness of the signatures appearing on the petition or any amendment, and upon the deposit of sufficient money or a guarantee to be approved by the board of county commissioners to cover the expenses of the survey and census hereinafter provided for, the board of county commissioners shall appoint some suitable person to take a census of the inhabitants of the proposed village and shall cause a survey to be made by the county surveyor. . . . The report of the survey and the census shall be filed on or before the first day of the regular or special meeting of the county commissioners fixed by them for final action on the petition and amendments thereto. If the board of county commissioners finds that the provisions of this section and the provisions of sections 14-4-1 and 14-4-2, New Mexico Statutes Annotated, 1953 Compilation have been fully complied with it shall promptly declare the proposed village to be an incorporated village and shall order an election to be held for the election of officers thereof as are provided for in section 14-16-8, New Mexico Statutes Annotated, 1953 Compilation; . . ."

The first sentence of the above statute calls for final action by the board of county commissioners upon the petition filed "**at either a regular or special meeting of the board . . . at the next regular meeting or a special meeting of the board of county commissioners called for that purpose, whichever occurs first.**" We interpret this language to require that once a petition has been filed seeking incorporation, that the board of county commissioners proceed with all deliberate speed to obtain a proper census of the inhabitants of the area, a plat of survey of the area and to examine the sufficiency of the signatures on the petition. The above quoted statute makes no provision for an extension of time at the request of either the proponents or opponents of incorporating the village.

In your fourth question, inquiry is made as to whether owners of real estate situate within the confines of an incorporated village would be subject to a special tax levy if they voted against the incorporation or if they actually reside outside the limits of the incorporated village.

Section 14-4-4, N.M.S.A., 1953 Compilation, sets out that "for the purpose of raising the necessary funds for current expenses during the time between the incorporation thereof and the time of the first collection of taxes, and the necessary expenses incurred in incorporating said village" the village may issue certificates of indebtedness, if approved by a majority of the trustees of the village.

Section 14-4-5, N.M.S.A., 1953 Compilation, specifies that:

"At the regular time thereafter for fixing the tax rate the trustees shall levy a tax upon the taxable property of the village, which taxes shall be collected as other taxes are collected, for the purpose of redeeming said certificates of indebtedness mentioned in the preceding section and also to defray the expenses of the village for the following

year. Provided however, said trustees shall not levy a tax in excess of the rate provided by law for villages."

If the board of trustees of the newly incorporated village under the provisions of the above statutes sets a tax levy, then such tax levy is applicable to all real property or personal property subject to ad valorem taxes within the area of the incorporated village and which is not otherwise tax exempt. Such levy is applicable irrespective of the place of residence of the owner of such property or whether or not such individual favored or opposed such incorporation; the sole criteria being that the property subject to the levy is located within the area of the incorporated village and the trustees of the village duly approved such levy.

Your fifth question asks if the board of county commissioners have a limited time in which to render a decision for or against such incorporation. This question was dealt with in part in our reply to your third question, and as pointed out therein, the board of county commissioners must render a final decision upon the question of incorporation "at either a regular or special meeting of the board of county commissioners called for that purpose, whichever occurs first." Such action necessarily contemplates that the board will proceed with due diligence to examine the sufficiency of the signatures on the petition, obtain a census of the population in the proposed area of incorporation, and obtain from the county surveyor a survey of the area of the village by plat. While the statute does not prescribe any exact time for the board to render its decision, it is clear that the statute requires all due diligence to be exerted and a final decision rendered at either the next regular meeting of the commission or a special meeting of the commission called after the commission has completed its independent investigation of ownership, signatures, surveys, etc. as above outlined.

Your last question presents the inquiry as to whether both a husband and wife may sign a petition for incorporation of a village.

As discussed in our answer to question one above, a person may sign such petition for incorporation if he or she (1) owns real property within the area of the proposed village limits, (2) resides within the proposed village limits, and (3) is not delinquent in the payment of property taxes. In our opinion both a husband and wife may sign such petition where they meet these requisites and own such real property either as joint tenants, tenants in common, as community property or as their specific separate property. In any event, however, a person to be eligible to sign such petition must own some interest in real property located within the confines of the proposed village area. Any question as to actual ownership of real property should be inquired into by the board of county commissioners and resolved by them.