

Opinion No. 65-146

August 5, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General James V. Noble, Assistant Attorney General

TO: Honorable John M. Eaves, State Representative /- Dist. 1, Bernalillo County, 2308 Dietz Place N.W., Albuquerque, New Mexico

QUESTION

QUESTIONS

1. Is the City Commission of a municipality located with an A Class County required to give notice to property owners with (100) one-hundred feet of an area proposed to be annexed by the city, pursuant to a petition signed by 100% of the owners of property located within the area so proposed to be annexed?
2. Is the City Commission of a municipality located within an A Class County required to give notice to property owners within one-hundred feet of an area which is proposed to be zoned by the City?
3. May the City Commission of a municipality located within an A Class County proceed to annex property pursuant to a petition signed by one-hundred 100% of the owners of property located within the area proposed to be annexed if property owners of adjacent property protest such annexation?
4. Can a municipality compel a property owner to connect to a sewer line or be charged on a standby basis if such property is located within one-hundred 100 feet of the sewer line?

CONCLUSIONS

1. No.
2. Yes, but see analysis.
3. Yes, see analysis.
4. See analysis.

OPINION

{*243} ANALYSIS

Information submitted along with the request for the opinion indicates that approximately 38 acres of land were annexed by a municipality located within an A class county. The land so annexed was simultaneously zoned. However, the annexation and the zoning were protested by a large number of adjacent property owners but the planning commission and city commission by unanimous action proceeded with the annexation and zoning. The annexation proceeded under the provisions of Chapter 12, laws of 1965, (Section 2 (2)) which declares a moratorium on annexation by municipalities located within A class counties except when **all** the owners of real property in a territory contiguous to the municipality petition the governing body for annexation of the territory. Following this the {*244} governing body adopts an ordinance for such annexation. The statute provides no method or requirement for giving notice to the public or to adjacent property owners or to property owners within 100 feet of the area proposed to be annexed.

There being no statutory requirement and no provision for the giving of such notice to the public or to nearby property owners there is no requirement that such a notice be given. Your first question is, therefore, answered in the negative.

Your next question concerns itself with notice, if any, to be given to adjacent property owners within 100 feet of an area proposed to be zoned. Section 14-28-12, N.M.S.A., 1953 Compilation (P.S.) provides for a public hearing on the establishment of regulations and restrictions or establishment of boundaries for zoning purposes. It is further provided that all parties in interest and interested citizens shall have an opportunity to be heard and requires that 15 days notice of the time and place of the hearing shall be published in an official paper or paper of general circulation in the municipality. Section 14-28-13, N.M.S.A., 1953 Compilation (P.S.), concerns itself with amending, supplementing, changing, modifying, or repealing of zoning regulations and restrictions and provides that in such case if 20% of the owners of property (by area) within which the change is proposed or immediately adjacent in the rear thereof extending 100 feet therefrom, or of those directly opposite thereto extending 100 feet from the street or road fronting and opposite such lands, protest such change, modification or repeal, then and in such event such amendment shall not become effective except by favorable vote of **three-fourths** of all members of the legislative or governing body of the municipality. The material forwarded along with your request for an opinion indicates that notice as to zoning was given and a hearing held following which more than three-fourths of the legislative body of the governing municipality approved the zoning. This may not have been a change, modification, amendment, or repeal or supplement as the case may be. And if not Section 14-28-13 may not apply. In any event, under the facts furnished not only was it complied with but even stricter rules and procedures were followed.

The next question concerns itself with whether or not a protest by adjacent or abutting owners of property to the area proposed to be annexed can prevent the annexation from being accomplished. The question has been partially answered by what has been stated above, to-wit: that a municipality may proceed with annexation where a petition is presented for annexation of territory contiguous to the municipality executed by **all** the

owners of real property in such territory. The statutes are not concerned with abutting or adjacent owners, but merely with the owners of property within the area to be annexed and which is contiguous to the municipality. The protest, therefore, by owners of adjacent or contiguous property would have no legal effect insofar as barring further annexation procedures. The answer to your third question is in the affirmative.

There is a state statute requiring, in substance, that a property owner within one hundred feet of a sewer line connect to the sewer line or pay a standby charge. Section 14-28-4, N.M.S.A., 1953 Compilation provides that the city may, by general ordinance, require the owner, agent, or occupant of a building or lots and lands that adjoin the streets and alleys where sewer pipes are laid to install proper plumbing that connects with the sewer. Section 14-40-39, N.M.S.A., 1953 Compilation simplifies the statute somewhat and permits the city to make rules and regulations in connection therewith. The following Section being 14-40-40, N.M.S.A., 1953 Compilation provides for a special assessment to be levied on property adjoining {245} streets and alleys where sewer lines are laid (14-40-38, N.M.S.A., 1953 Compilation) and the levy shall be a lien upon the premises upon which they are properly assessed and a personal liability of the owner of the property, for sewer service available to such property.

I find no other statutes pertaining to this particular point and you will note that the 100 foot classification set forth in your question does not necessarily apply but rather the application of the statutes are as to lands adjoining the streets or alleys where sewer pipes are laid. In such case the adjoining property owner may be compelled to connect to the sewer or to pay a levy on such adjacent premises where sewer service is available.

Until after July 1, 1967 when certain studies have been made, with the Legislature given an opportunity to speak on the subject, no annexation may be made by a municipality in an A class county except in conformance with the provisions of Chapter 12, Laws of 1965, i.e., upon a favorable vote by the owners of real property in the area who are registered voters in such area upon a 100 percent petition; or when a health hazard is present and certain other conditions are met.