

Opinion No. 65-214

October 29, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Mr. Merrill E. DeLonge, Deputy Planning Officer, State Planning Office, 120 S. Capitol, Santa Fe, New Mexico

QUESTION

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1. Is there a conflict in planning and platting jurisdiction granted to municipalities over 100,000 by Section 14-18-5 N.M.S.A., 1953 Compilation (P.S.), and the jurisdiction to approve the subdivision and platting of land granted to municipalities of over 25,000 by Section 14-19-5, N.M.S.A., 1953 Compilation (P.S.)?

2. Do Sections 14-19-1 and 14-19-2, N.M.S.A., 1953 Compilation (P.S.) allow exclusive use of metes and bounds to describe internal as well as external boundaries in land which is to be subdivided?

CONCLUSIONS

1. No.
2. See analysis.

OPINION

{*348} ANALYSIS

Sections 14-18-5, supra, and 14-19-5, supra, read as follows:

"14-18-5. PLANNING AND PLATTING JURISDICTION. -- A. Each municipality shall have planning and platting jurisdiction within its municipal boundary. The planning and platting jurisdiction of a municipality:

(1) having a population of one hundred thousand or more persons includes all territory within ten miles of its boundary and not within the boundary of another municipality;

(2) having a population of twenty-five thousand or more persons, but less than one hundred thousand persons, includes all territory within five miles of its boundary and not within the boundary of another municipality; or

(3) having a population of less than twenty-five thousand persons, includes all territory within three miles of its boundary and not within the boundary of another municipality.

B. If territory, not lying within the boundary of a municipality, is within the jurisdiction of more than one municipality, the planning and platting jurisdiction of each municipality shall terminate equidistant from the boundary of each municipality unless one municipality has a population of less than two thousand five hundred persons and another municipality has a population of more than two thousand five hundred persons. Then the planning and platting jurisdiction of { *349 } the municipality having the greatest population extends to such territory."

"14-19-5. COUNTY AND MUNICIPAL JURISDICTION OVER SUBDIVISION -- CONCURRENT JURISDICTION -- ACCEPTANCE OF UNAPPROVED STREETS. -- A. For the purpose of approving the subdivision and platting of land:

(1) The jurisdiction of a county includes all territory not within the boundary of a municipality;

(2) the jurisdiction of a municipality having a population of twenty-five thousand or more persons includes all territory within five miles of the boundary of the municipality and not within the boundary of another municipality; and

(3) the jurisdiction of a municipality having a population of less than twenty-five thousand persons includes all territory within three miles of the municipal boundary and not within the boundary of another municipality. Each municipality shall have jurisdiction over the territory within its boundary.

B. If territory, not lying within the boundary of a municipality, is within the platting jurisdiction of more than one municipality, the platting jurisdiction of each municipality shall terminate equidistant from the boundary of each municipality unless one municipality has a population of less than two thousand five hundred persons. Then the platting jurisdiction of the municipality having the greatest population extends to such territory.

C. The county and a municipality shall exercise concurrent jurisdiction over territory within the platting jurisdiction of both the county and the municipality.

D. Subject to the provisions of this section, the governing body of a municipality or the board of county commissioners shall not accept, lay out, open, improve, grade, pave or light any street or authorize the laying of water mains, sewers, connections or other facilities or utilities in any street within the municipality or within the planning and platting jurisdiction of the municipality unless the street corresponds in location and lines with a street shown on a subdivision plat approved by the planning authority or a street plat adopted by the planning authority.

E. The governing body of a municipality or the board of county commissioners may locate, construct or accept any other street if the ordinance or resolution accepting the street is first submitted to the planning authority for approval or disapproval. If disapproved by the planning authority, the ordinance or resolution accepting the street may be approved by a two-thirds vote of all the members of the governing body of the municipality or board of county commissioners. A street accepted by the planning authority or by a two-thirds vote of all the members of the governing body of the municipality or board of county commissioners shall have the same status as any other public street."

Section 14-18-5, supra, gives cities of over 100,000 jurisdiction for planning and platting" in "all territory within ten miles of its boundary". Section 14-19-5, supra, gives all municipalities of more than 25,000 jurisdiction for "approving the subdivision and platting of land" over "all territory within five [5] miles of the {350} boundary of the municipality". This means there is a geographical difference between the two jurisdictions of five miles for municipalities of over 100,000. It is this difference which has caused the difficulty in this case.

If the terms "planning and platting" and "approving of subdivision and platting" do not mean the same things, then there is no conflict because there would be two qualitatively different jurisdictions. Consequently, the two different geographical jurisdictions for cities of 100,000 or more would be able to stand.

In the case of **Carlsbad v. Caviness**, 66 N.M. 230, 346 P.2d 310, the term "planning and platting jurisdiction" was interpreted to mean that a municipality was empowered to provide for "the systematic and orderly development of a community with particular regard for streets, parks, industrial and commercial undertakings, civic beauty, and other kindred matters properly included within police power." The Court pointed out in particular that such jurisdiction was in aid of a municipality's authority to create a master plan under the former Municipal Code, section 14-2-18, N.M.S.A., 1953 Compilation, repealed Laws 1956, Ch. 300.

It is inescapable that the same interpretation of "planning and platting jurisdiction" is required under the present Municipal Code. Section 14-18-9, N.M.S.A., 1953 Compilation (P.S.) provides a master plan shall be created covering" the municipality and the area within the planning and platting jurisdiction of the municipality." Therefore, for purposes of this opinion, the most important feature of "planning and platting jurisdiction" is that such jurisdiction gives municipalities the power, within a given geographic area, to anticipate and provide for future development of the municipality and its environs. This jurisdiction is given to a municipality so it may presently create regulations for subdivisions, Section 14-18-6, N.M.S.A., 1953 Compilation (P.S.), and prepare a master plan, Section 14-18-9, supra, and do certain other acts so that it will be prepared to act when growth occurs.

When the prepared-for growth is about to occur, Section 14-19-5, supra, comes into play. This statute gives a municipality authority to **approve** the subdivision and platting

of land within a certain distance from the municipal boundaries. This statute gives a municipality or a board of county commissioners concurrent authority to carry into effect the master plan.

It has been demonstrated that there are two jurisdictions for two different purposes. One provides municipalities with a means for making a master plan for future development. The other jurisdiction provides a municipality with the power to put that plan to work. Therefore, the fact that the former jurisdiction is in one instance geographically greater than the latter does not affect the validity of either jurisdiction.

Sections 14-19-1 and 14-9-2, supra, provide as follows:

"14-19-1. PLATTING -- DEFINITIONS. -- 'Subdivide' or 'subdivision' means the division of land into two or more parts by platting or by metes and bounds and description into tracts of less than five acres for the purpose of:

- A. Sale for building purposes;
- B. Laying out a municipality or any part thereof;
- C. Adding to a municipality;
- D. Laying out suburban lots; or
- E. Resubdivision.

'Plat' means map, chart, plan or replat which contains a {*351} description of subdivided land."

"14-19-2. SUBDIVISION -- DESCRIPTION. -- Every person who desires to subdivide land shall furnish a plat of the proposed subdivision, prepared by a registered, licensed surveyor of New Mexico. The plat shall refer to permanent monuments and shall accurately describe lot, number each lot in progression, give its dimensions and the dimensions of all land dedicated for public use or for the use of the owners of lots fronting or adjacent to the land. Descriptions of the lots by number and plat designation are valid in conveyances and for the purpose of taxation."

Section 14-19-1, supra, merely defines the words "subdivide", "subdivision", and "plat". This section does not describe what standards shall be met by persons who wish to subdivide land.

Section 14-19-2, supra, specifically requires that a "plat" be furnished by "every person who desires to subdivide land". This "plat" must, of course, fall within the meaning of that word as defined by 14-19-1, supra. Therefore, whenever it is possible for a **plat** to be made up with a metes and bounds description, then and only then, will a metes and bounds description satisfy the demands of 14-19-2, supra.