

Opinion No. 67-50

March 23, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Edwin O. Wicks, M.D., Dr. P.H. Director Department of Public Health 408 Galisteo Santa Fe, New Mexico 87501

QUESTION

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1. Does a Mutual Domestic Water and/or Sewage Works Association, as organized under the Sanitary Projects Act of 1957, have the power of Eminent Domain when the Association functions as a utility?
2. Is there any situation involving utilities in which the County Commissioners can exercise Eminent Domain on behalf of a Mutual Domestic Water and/or Sewage Works Association?

CONCLUSIONS

1. No.
2. No.

OPINION

{*71} ANALYSIS

The grant of the power of eminent domain is in derogation of the rights of citizens. Accordingly when a private individual or corporation seeks to take the property of another under the power of eminent domain, affirmative authority for the exercise of the power must be shown. 26 Am.Jur.2d Section 18, p. 659; 1 Nichols, Eminent Domain, Section 3.21; **Southwestern Bell Telephone Co. v. Newingham**, 386 S.W.2d 663, 665 (Mo. Ct. App., 1965).

We find nothing in the Sanitary Projects Act, Sections 14-28-1 through 14-28-19, N.M.S.A., 1953 Compilation, which indicates that the legislature intended to delegate the power of eminent domain to a mutual domestic water and/or sewage works association. In the absence of such affirmative authority we must conclude that the authority was not delegated to these associations.

Other public utilities of this nature have powers of condemnation by virtue of Section 67-2-17 and 68-2-18, N.M.S.A., 1953 Compilation, but the powers of those sections are

limited to corporations incorporated under Sections 68-2-1 through 68-2-23, N.M.S.A., 1953 Compilation.

Your second question asks whether county commissioners can exercise the power of eminent domain on behalf of a mutual domestic water and/or sewage association. Section 22-9-15, N.M.S.A., 1953 Compilation grants counties the power to condemn property for the use of the county. Section 75-4-1.1, N.M.S.A. 1953 Compilation (P.S.) grants boards of county commissioners the power to condemn property for county water systems. This power is subject to the limitations of Section 22-9-15, supra, and therefore we must conclude that counties cannot condemn property on behalf of mutual domestic water and/or sewage associations.

By: Gary O'Dowd

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