

## Opinion No. 75-04

January 28, 1975

**BY:** OPINION OF TONEY ANAYA, Attorney General

**TO:** Fred T. Hensley Ninth Judicial District Attorney Curry County Courthouse Clovis,  
New Mexico 88101

### QUESTIONS

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May a county participate with county equipment and funds in the maintenance and construction of roads or highway facilities within an incorporated village (Melrose) in the county?

#### CONCLUSION

Yes, under certain circumstances.

### OPINION

#### {\*35} ANALYSIS

A county possesses only such powers as are expressly conferred upon it by constitutional provisions or legislative enactments. See Opinion of the Attorney General No. 69-103, dated September 3, 1969. Generally, there is no constitutional or statutory authority which requires a county road department to perform services within the limits of an incorporated village. In fact, public highways within the corporate limits of any incorporated city or town are expressly excluded from a county's maintenance and repair responsibility. Section 55-1-2, NMSA, {\*36} 1953 Comp. For purposes of this opinion, we see no legal distinction between an incorporated town on the one hand, and an incorporated village on the other. See **Phillips v. Town of Scales Mound**, 195 Ill. 353, 63 N.E. 180 (1902).

Opinion of the Attorney General No. 69-103, **supra**, examined a related matter and concluded that a municipality could enter into a contract to purchase the services of a county road department. A similar result could be obtained by use of a joint powers agreement. We quote approvingly from the earlier opinion:

"In a sense, a county doing road work for a municipality . . . is engaging in competition with private enterprise [sic] in the same manner as it would in doing work for a private person. We are unable to find any specific power of the county to do work for municipalities . . . but such may be implied from an exemption in the Purchasing Act. Section 6-5-34(A), N.M.S.A., 1953 Compilation 1969 Supp. provides that:

'The provisions of the Public Purchases Act shall not apply: to purchases of materials, services, or real property by a state agency or local public body from a state agency or local public body . . .'

"For the purposes of this section, state agency includes an institution and local public body includes every political subdivision of the state. Section 6-5-18(A) & (B), N.M.S.A., 1953 Compilation, 1967 Supp. It appears, therefore, that the Legislature contemplated that the municipalities . . . would purchase the services of the county, including the road department services. It is also permissible for the county to enter into a joint power agreement with either a municipality or institution to achieve the same result, so long as both parties have the power to do the work separately. See § 4-22-1, et seq., N.M.S.A., 1953 Compilation."

The conclusion and reasoning of Opinion of the Attorney General No. 69-103, **supra**, are applicable to your question. Thus, in your situation, it appears that the incorporated village of Melrose could either enter into a purchase agreement for county road services or enter into a joint powers agreement for that purpose. This would apply to both maintenance and construction.

By: Ralph W. Muxlow II

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