

## **Opinion No. 76-05**

February 5, 1976

**BY:** OPINION OF TONEY ANAYA, Attorney General Don Montoya, Assistant Attorney General

**TO:** Honorable Manny M. Aragon, State Senator Executive-Legislative Building, Santa Fe, New Mexico 87501

### **QUESTIONS**

#### QUESTIONS

1. Can consolidation of the Bernalillo County Sheriff's Department and the Albuquerque City Police Department occur under present law?
2. If consolidation could not come about under existing law, what State laws or constitutional provisions must be changed or amended to enable a consolidation of the two law enforcement agencies.

#### CONCLUSIONS

1. No.
2. See Analysis.

### **OPINION**

#### {\*51} ANALYSIS

The first issue raised was the subject of Opinion of the Attorney General No. 73-25. In that opinion, the question considered was whether consolidation could be effectuated by means of the utilization of the Joint Powers Agreement Act, Sections 4-22-1 through 4-22-7, NMSA, 1953 Comp. Because there were existing statutes providing for the election of a sheriff, and outlining the duties and responsibilities of that office, the conclusion was that the City of Albuquerque and the County of Bernalillo could not "contract to supersede state statutes setting forth the powers, functions and duties of the sheriff's office." We reaffirm that conclusion. Consolidation of the Albuquerque Police Department and the Bernalillo County Sheriff's Office cannot be effected under present law.

As to the second question, we emphasize that in this opinion we will not address ourselves to the desirability or efficacy of such a merger. Our comments will be confined to the legal issues raised by such a proposed merger.

At the outset, it is crucial to note that the Office of the Sheriff is not created by the Constitution of the State of New Mexico. Moreover, no county office derives its status from the organic law of the Constitution of the State of New Mexico. Article X, Section 1 of the Constitution of the State of New Mexico provides that:

"The legislature shall at its first session classify the counties and affix salaries for all county officers . . ."

Thus counties and county officers are, in the strict sense, creatures {\*52} of statute. **State ex rel. Robinson v. King**, 86 N.M. 231, 522 P.2d 83 (1974); **Dow v. Irwin**, 21 N.M. 576, 157 P. 490 (1916); see also **State v. State Canvassing Bd.**, 78 N.M. 682, 437 P.2d 143 (1968); **All State Leasing Corp. v. Board of County Comm'rs, Rio Arriba County**, 450 F.2d 26 (10th Cir. 1971). The Legislature has created a Sheriff's Office in each county and has specified its duties, responsibilities and extent of authority. Sections 15-40-1 to 15-40-23, **supra**.

Absent any express constitutional limitation, the legislative power to create an office carries with it the full and unquestionable power to limit, extend, or otherwise modify incidents attending it, in the public interest. **Lanza v. Wagner**, 229 N.Y. Supp. 2d 380, 183 N.E.2d 670 (1962), **cert. denied**, 371 U.S. 901, 9 L. Ed. 2d 164, 83 S. Ct. 205; **Dade County v. Kelley**, 153 So. 2d 882 (Fla. 1963); **Burke v. Kern**, 287 N.Y. 203, 38 N.E.2d 500 (1941); see also 4 A.L.R. 205 and 172 A.L.R. 1366.

As an example of the exercise of such legislative authority, the Legislature in 1972 provided enabling legislation authorizing county commissioners to enter into an agreement with a municipality in which the county seat is located to provide for the construction, maintenance or operation of one (1) or more jails. See Section 42-2-1.1, NMSA, 1953 Comp. (2nd Repl. Vol.).

In like manner, the Legislature could provide for the consolidation of the Bernalillo County Sheriff's Office and the Albuquerque Police Department. Such a consolidation would necessarily affect all statutes relating to the duties and responsibilities of the sheriff. See Section 15-46-1 to 15-40-23, **supra**. In addition, there are statutes which collaterally affect the office of sheriff which would have to be considered. See, for example, Section 15-43-4(D), **supra**, setting forth the salary of the sheriff in Class A counties.

In conclusion, consolidation may not take place under existing law and legislative action would be required. Such legislative action should encompass all statutes directly or collaterally affecting the office of sheriff so that there would exist no inconsistencies between the functions and activities of the consolidated force and those presently provided by statute.