

Opinion No. 81-29

November 10, 1981

OPINION OF: Jeff Bingaman, Attorney General

BY: Jill Z. Cooper, Deputy Attorney General

TO: Honorable David W. Bonem, District Attorney Ninth Judicial District, Curry County Courthouse, Clovis, New Mexico 88101

QUESTIONS

May the Curry County Commission enact a personnel ordinance governing the terms and conditions of employment of persons hired by the other elected county officials consistent with the duties and responsibilities of their respective office?

CONCLUSIONS

Yes.

ANALYSIS

Pursuant to Section 4-38-19 NMSA 1978, individual elected county officers are authorized "to hire and recommend the salaries of persons employed by them to carry out the duties and responsibilities of the offices to which they are elected." In the absence of any law or agreement to the contrary, such authority to "hire" may imply the right to control the terms and conditions of employment, see **A. J. Meyer & Co. v. Unemployment Compensation Commission**, 348 Mo. 147, 152 S. W. 2d 184, 189 (1941), and the right to discharge, see, **Jones v. International Union of Operating Engineers**, 72 N.M. 322, 383 P.2d 571 (1963). However, under New Mexico law, the county commission has been delegated the authority to exercise some supervisory control over **all** county employees, and where the commission chooses to exercise that authority, the employees of individual elected county officers will be bound thereby.

For example, although Section 4-38-19 provides that elected county officials may "recommend" salaries for persons they hire, it also provides that such salaries are actually set by the county commission. See, Opinion of the Attorney General No. 75-64, dated December 1, 1975. Salaries and expenses of all county employees are paid by the county commission in accordance with its approved budget. See, Sections 4-38-16 and 4-38-17 NMSA 1978.

With respect to employees in the office of the county sheriff, Section 4-41-6 NMSA 1978 specifically authorizes the county commission to establish, by ordinance, a merit system to "provide for the classification of deputies and other employees and their probationary periods, service ratings, pay scales and ranges, the number of hours of work per week

and the methods of employment, promotion, demotion and discharge..." Although the county commission is not so expressly authorized to adopt an ordinance to regulate county employees hired by the county assessor, clerk or treasurer, such authority may be fairly implied from the general powers of the county.

A county may exercise such powers as are expressly granted by the legislature or which may be necessarily implied therefrom. **El Dorado at Santa Fe, Inc. v. Board of County Commissioners of Santa Fe County** , 89 N.M. 313, 551 P.2d 1360 (1976). The powers of the county as a body politic are vested in the board of county commissioners, Section 4-38-18 NMSA 1978, who shall have "the management of the interest of the county in all cases where no other provision is made by law," Section 4-38-18 NMSA 1978. The management of the county interests would properly include the management of persons employed on behalf of the county.

In particular, the authority of the county commission to enact an ordinance adopting a merit system for county employees other than those in the sheriff's office may be fairly derived from Section 4-37-1 NMSA 1978 which grants counties the same powers as have been granted to municipalities and, accordingly, from Section 3-13-4 NMSA 1978 which authorizes a municipality to enact a merit system for municipal employees. Section 3-13-4 provides that a municipality may, by ordinance, adopt rules and regulations governing classification, service ratings, pay scales and ranges, working hours, and methods of employment, promotion, demotion, suspension and discharge.

As a general rule, "[w]here not in conflict with state enactments, rules of the county governing body can control working conditions of county officers and employees." Antieau, **Municipal Corporation Law** , Vol. 4, Section 34.06 (1966). State laws define the duties and responsibilities of the individual elected county officers and their respective offices. A county ordinance cannot, therefore, operate to impair the performance of those duties and responsibilities.

In short, reserving to the individual elected county officers the authority to hire, recommend salaries and discharge their statutory duties, the county commission may exercise its express or derived authority to establish by ordinance a merit system as defined by Section 4-41-6 or Section 3-13-4 to otherwise regulate the employment of all county employees.

ATTORNEY GENERAL

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