

Opinion No. 82-07

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OPINION OF: Jeff Bingaman, Attorney General

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TO: The Honorable Frank Horan, New Mexico State Representative, P.O. Box 1634, Albuquerque, New Mexico 87103

ENVIRONMENTAL IMPROVEMENT; MUNICIPALITIES

Section 4-37-2 NMSA 1978, does not exempt a municipality from regulations adopted by the Albuquerque-Bernalillo County Air Quality Control Board which has authority to adopt regulations to prevent or abate air pollution in Bernalillo County.

FACTS

The 1977 Clean Air Act, 42 U.S.C. Sections 7401, **et seq.**, requires the State to implement a plan to achieve national air ambient quality standards within its boundaries. Compliance with federal air pollution legislation is governed in New Mexico by the Air Quality Control Act, Sections 74-2-1 to 74-2-17 NMSA 1978.

The federal Environmental Protection Agency has designated all of Bernalillo County as a "nonattainment area," that is, an area in which the national ambient air quality standards for certain air contaminants relating to motor vehicle emissions have been exceeded. The Albuquerque-Bernalillo County Air Quality Control Board, created by Albuquerque ordinance and Bernalillo County ordinance to assume county-wide jurisdiction as provided by the Air Quality Control Act, has adopted a program to regulate motor vehicle emissions throughout Bernalillo County.

QUESTIONS

Are municipalities in Bernalillo County which have not adopted ordinances for the administration and enforcement of the Air Quality Control Act subject to the regulations of the Albuquerque-Bernalillo County Air Control Board relating to motor vehicle emissions?

CONCLUSIONS

Yes.

ANALYSIS

The environmental improvement board has jurisdiction to administer and enforce the Air Quality Control Act (Act) throughout the state "except within the boundaries of municipalities within A class Counties or A class counties which have elected, by adopting the appropriate ordinance, to assume jurisdiction for the administration and enforcement of the Air Quality Control Act." Section 74-2-3. Where an A class county or any municipality within an A class county elects to adopt such an "appropriate" ordinance, Section 74-2-4 provides that "[t]he ordinance shall create a municipal, county or joint air quality control board to administer and enforce the provisions of the [Act] within the boundaries of the municipality or county . . ."

OPINION

The Act does not require every municipality in the county to adopt an ordinance in order to be subject to a county board or joint board's jurisdiction. Under the Air Quality Control Act, air pollution throughout the state is controlled by subjecting every area of the state to the regulatory authority of some board: either the environmental improvement board or, in Bernalillo County, a board created in accordance with Section 74-2-4.

{*281} Although Section 4-37-2 NMSA 1978 generally provides that county ordinances "are not effective within the limits of any incorporated municipality," a county ordinance adopted pursuant to Section 74-2-4 to create a joint air quality control board is clearly intended to have county-wide effect. The apparent conflict between the general provisions of Section 4-37-2 and the specific provisions of Section 74-2-4 may be resolved by giving effect to the more specific statute. **Cromer v. J.W. Jones Construction Co.**, 79 N.M. 179, 441 P.2d 219 (Ct.App. 1968).

Nor would Section 4-37-2 restrict the effectiveness of regulations adopted by the Albuquerque-Bernalillo County Air Quality Control Board. The Board is generally authorized under the Act to adopt regulations to prevent or abate air pollution "within the geographic area of the board's jurisdiction, or any part thereof." Section 74-2-5(B)(1). In particular, Section 74-2-5(B)(1) authorizes the Board to adopt regulations "to achieve national ambient air quality standards in nonattainment areas," and specifically refers to regulations "relating to control of motor vehicle emission."

Thus, a regulation adopted by the Board to control motor vehicle emission is intended to apply throughout any area subject to the Board's jurisdiction where such emissions do not achieve national ambient air quality standards. All of Bernalillo County is such a nonattainment area.

The scope of regulatory jurisdiction was discussed in **New Mexico Municipal League, Inc. v. New Mexico Environmental Improvement Board**, 88 N.M. 201, 539 P.2d 221 (Ct. App. 1975), **cert. denied**, 88 N.M. 318, 540 P.2d 248 (1975), in which it was alleged that regulations adopted by the environmental improvement board governing waste disposal were in conflict with the statutory authority granted to municipalities to adopt ordinances to regulate waste disposal. The Court found that:

"It is manifest that it was the intention of the legislature to give the Environmental Improvement Board state-wide, paramount authority to "enforce regulations and standards" in the various areas listed and that all other entities of government and political subdivisions thereof must conform."

88 N.M. at 207.

Similarly, the Albuquerque-Bernalillo County Air Quality Control Board has paramount authority to adopt regulations to prevent or abate air pollution in Bernalillo County. Section 4-37-2 does not exempt a municipality from regulations adopted by a county-level board created for the purpose of being responsible for the area within the boundaries of the county.

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