

February 19, 2008 Statutory Requirements for Vacating Townsite

Ronald Reeves
Tenth Judicial District Attorney
P.O. Box 1141
Tucumcari, NM 88401

Re: Opinion Request – Statutory Requirements for Vacating Townsite

Dear Mr. Reeves:

Your office requested our advice concerning the statutory requirements for vacating a portion of the former townsite of Montoya, created from federal lands in the early 1900's, next to what was then a railroad right-of-way. More specifically, you have asked whether the Board of County Commissioners for Quay County (the "Commission") needs to take any action when the owner of the land being vacated complies with the requirements of NMSA 1978, Section 19-4-6 (1884). We understand that your office has advised the Commission that it need take no further action once the owner has complied with Section 19-4-6. The owner's counsel, however, believes that the Commission must also follow the requirements of NMSA 1978, Sections 67-5-1 through 67-5-21, even though no county roads have ever been established on the land. Based on our examination of the relevant constitutional, statutory and case law authorities, and the information available to us at this time, we conclude that Section 19-4-6 does not require the Commission to take any action to complete the vacation of the townsite or any portion thereof by its owners. We further conclude that the requirements of Sections 67-5-1 through 67-5-21 are not applicable to the instant case because, at no time since the establishment of the townsite of Montoya, has any county road been established and maintained by the County as a public highway on the land.

As a preliminary matter, there are several rules of statutory construction that guide our analysis. First, in construing a statute, our goal is to give primary effect to legislative intent, which intent is evidenced primarily through the statute's language. See Souter v. Ancae Heating and Air Conditioning, 2002-NMCA-078, 132 N.M. 608, 611. Second, under the plain meaning rule, we give statutory language its ordinary and plain meaning unless the Legislature indicates a different interpretation is necessary. See Cooper v. Chevron, 2002-NMSC-020, 132 N.M. 382, 388.

Section 19-4-6 sets forth the requirements that must be followed when the owners of a tract of land filed upon, platted and recorded as a townsite in accordance with the provisions of an act of Congress or New Mexico law may vacate the land by agreement of all the inhabitants or owners. It states in pertinent part:

When any tract of land has been recorded as a townsite, or has been annexed as an addition to a townsite, any part or portion thereof may be vacated upon the written consent of all the owners of that part or portion which it is proposed to vacate: provided, that no expenditures of money have been theretofore made or incurred by said town for

the improvement or benefit of said part or portion, and that the same is bounded in same [whole] or in part by exterior town lines, and that when so vacated a statement, subscribed by such owners, setting forth the facts of such vacation, together with an accurate description, map and plat of such part vacated shall be filed in the office of the county clerk of the county in which such town is situated.

By its own terms, Section 19-4-6 does not require the Commission to take any action to approve, disapprove, or otherwise acknowledge the townsite vacation. In connection with the Montoya townsite, former Chief Deputy District Attorney Donald C. Schutte informed us that one party owns a significant portion of the original townsite of Montoya and the same party wishes to vacate that portion of the townsite under their ownership. We further understand that the township as a whole did not make any improvements, including roadways, on the portion of the townsite proposed for vacation. Under these circumstances, we agree that no Commission action is required upon the owner's compliance with the requirements of Section 19-4-6. Once the owner has filed with the County Clerk a statement meeting the requirements set forth in Section 19-4-6, no further action by the Commission or the owner is necessary.

Mr. Schutte also informed us that no county ownership is involved and no county roads have been established or maintained across the portion of the townsite the owner wishes to vacate. NMSA 1978, Section 67-5-1, et seq., relate to the vacation, alteration and establishment of county roads and bridges. These provisions do not apply to the portion of the Montoya townsite discussed above because no county roads exist on that portion.

Your request to us was for a formal Attorney General's Opinion on the matters discussed above. Such an opinion would be a public document available to the general public. Although we are providing you our legal advice in the form of a letter instead of an Attorney General's Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the public.

Very truly yours,

SALLY MALAVÉ
Assistant Attorney General

cc: Albert J. Lama, Chief Deputy Attorney General