

July 5, 2007 Land grant board representation by District Attorney's Office

The Honorable Richard D. Flores
District Attorney
Fourth Judicial District
Post Office Box 2025
Las Vegas, New Mexico 87701

Re: Opinion Request — Anton Chico Land Grant Board Legal Services

Dear District Attorney Flores:

You have asked whether the Anton Chico Land Grant Board qualifies for legal representation from the district attorney's office in the Fourth Judicial District. Specifically, you state: "The Land Grant is under the impression, based on Sections 49-1-1 thru 49-1-18, NMSA 1978, that they fall under the same guidelines as county commissions in regard to receiving legal services by the district's attorney office." Based on our examination of the relevant New Mexico statutory and case law authorities, and on the information available to us at this time, we conclude that members of the Anton Chico Land Grant Board are not "county officers" and, therefore, the district attorney is not obligated to provide legal services to the Board.

The duty of a district attorney to represent counties is delineated primarily in NMSA 1978, Section 36-1-18(A) (2001), which provides:

Each district attorney shall:

- (1) prosecute and defend for the state in all courts of record of the counties of his district all cases, criminal and civil, in which the state or any county in his district may be a party or may be interested;
- (2) represent the county before the board of county commissioners of any county in his district in all matters before the board whenever requested to do so by the board, and he may appear before the board when sitting as a board of equalization without request;
- (3) advise all county and state officers wherever requested.
- (4) represent any county in his district in all civil cases in which the county may be concerned in the supreme court or court of appeals, but not in suits brought in the name of the state.

Under this section, "the district attorney is to serve as attorney for the county in all matters when called upon to so act." N.M. Att'y Gen. Op. No. 6565 (1956). "This statute confers upon the District Attorneys the responsibility of responding to county requests for legal advice," N.M. Att'y Gen. Op. No. 77-7 (1977), by requiring the district attorney

“to advise all county and state officers as to their official duties, when so requested.”
Hanagan v. Bd. of County Comm’rs, 64 N.M. 103, 105, 325 P.2d. 282 (1958).

By its terms, Section 36-1-18(A) authorizes a district attorney to provide legal advice and representation to counties and county officers. Past opinions issued by this office have concluded that the obligation imposed on district attorneys under Section 36-1-18(A) does not extend to political subdivisions other than counties or their officers. See N.M. Att’y Gen. Op. No. 57-65 (1957) (district attorney had no duty or authority to advise ditch commissioners and majordomos because they “are neither county nor state officers”); N.M. Att’y Gen. Op. No. 6152 (1955) (a district attorney had no obligation to represent a school district). Thus, the Fourth Judicial District Attorney’s obligation to provide legal services to the Anton Chico Land Grant Board members depends on whether they are county officers.

Unless the legislature clearly intends otherwise, the words in a statute are given their ordinary and usual meaning. See State ex. rel. Highway Comm’n v. Marquez, 67 N.M. 353, 359, 355 P.2d. 287 (1960). The dictionary definition of the term “officer” is, in pertinent part, “a person holding public office under a national, state or local government, and authorized by that government to exercise some specific function.” Black’s Law Dictionary (8th ed. 2004). A “county officer” is “an officer whose authority and jurisdiction are confined to the limits of the county served.” Id. See also N.M. Att’y Gen. Op. No. 91-9 (1991) (concluding that a probate judge is a county officer because the judge has only countywide authority, the salaries of probate judges are set by law in the same manner as county officers and the board of county commissioners is charged with filling vacancies in the office of probate judge).

The Anton Chico Land Grant is a political subdivision of the state, NMSA 1978, § 49-1-1 (2004). However, it is not a county. Counties are also political subdivisions of the state, but they are created under laws that are separate and unrelated to those that apply to land grants. Compare NMSA 1978, ch. 4 (laws governing the establishment, powers and duties of counties and county officers) with NMSA 1978, §§ 49-1-1 to –18 (1907, as amended through 2004) (laws applicable to land grants designated as political subdivisions, including the Anton Chico Land Grant). Accordingly, while the Anton Chico Land Grant Board members are undoubtedly officers, see NMSA 1978, § 49-1-3 (2004) (members of land grant board of trustees are charged with control, care and management of the land grant), they are not “county officers” within the meaning of Section 36-1-18(A)(3). From this we conclude that, absent further direction from the legislature,¹ the Fourth Judicial District Attorney’s Office is not obligated to provide the Board with legal services.

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.

Sincerely,

Zachary Shandler
Assistant Attorney General

cc: Albert J. Lama, Chief Deputy Attorney General

Alvin Garcia, Assistant Attorney General

[1] When the legislature has chosen to authorize district attorneys to represent government bodies and officers other than the state or counties, it has done so expressly. See, e.g., NMSA 1978, § 36-1-18(B) (district attorney may contract with an Indian nation, tribe or pueblo to serve as tribal prosecutor); § 73-20-41(E) (2003) (a soil and water conservation district may request legal services from the district attorney). We have examined the statutory provisions applicable to land grants (NMSA 1978, §§ 49-1-1 to -23) and neither those provisions nor any other statute appears to authorize or require district attorneys to provide legal services to land grants at this time.