

Opinion No. [29-13]

October 3, 1929

BY: J. A. MILLER, Assistant Attorney General

TO: Fahy and Beutler, Attorneys at Law, Taos, New Mexico.

COUNTY COMMISSIONERS -- Regulating traffic in unincorporated village.

OPINION

Reference is made to yours of the 28th ult. in which you request, on behalf of the Lions Club of Taos, an opinion as to the powers of the Board of County Commissioners over traffic regulations in the streets of unincorporated villages in New Mexico and in which you cite for consideration Section 1206 of the Codification of 1915.

Section 1206 delegates to Boards of County Commissioners in unincorporated county seats the powers that were possessed by Boards of Trustees and city councils in unincorporated towns and cities on March 7, 1897, but only with reference to the care, opening, altering, changing and grading of roads and streets and with reference to sidewalks. I do not find in the language used authority to regulate traffic on the roads and streets.

Another section considered in section 1150 of the Codification of 1915 in which general powers of counties enumerated and the fourth subsection of which is as follows:

"To make all contracts and do all other acts in reference to the property and concern necessary to the exercise of its corporate or administrative powers."

You probably have considered or will consider the quotation following that section, being from *Agua Pura Co. vs. Mayor, etc.*, 10 N.M., 6. From this it appears that the court considers boards of county commissioners in this state to possess something more than the ordinary powers usually enjoyed by such boards, but it is noted that the powers listed are corporate and administrative powers only, there being no legislative power indicated.

It is undoubtedly the rule that boards of county commissioners or municipal boards of any character are limited in their powers to such as are either specifically granted or necessarily implied from those specifically mentioned and unless we can find in the statutes a grant of legislative power, I am of the opinion that boards of county commissioners have no such power.

You probably have considered in connection with your town's problem Chapter 75 of the New Mexico Session Laws of 1929, known as the Uniform Motor Vehicle Act regulating the operation of vehicles. In this act permission is granted local authorities in their

respective jurisdictions to provide by ordinance for the regulation of traffic within limitations. See particularly sections 7c and section 32. But here again we seem to be handicapped by the definition of "local authorities," section 1-y, the term being defined as "every county, municipal and other local board or body having authority to adopt local police regulations under the constitution and laws of this state."

As suggested above, I am of the opinion that boards and county commissioners being without legislative authority have no authority to adopt police regulations which would require the imposition of penalties to make them effective.

It has occurred to me that the Uniform Motor Vehicle Act, above referred to might, by study and through the efforts of your sheriff, be made applicable to most of the difficulties with which you may have to contend. I say through the efforts of your sheriff because of the provisions of section 65 of that act relative to the employment of magistrates and officers.

It strikes me as a little bit unfortunate that a town so populous, so progressive and so full of life as Taos should remain unincorporated. However, that is the business of the inhabitants of the town and so long as that condition exists I fear that there will be no legal means of regulating traffic beyond that provided by general legislation.