

# Attorney General of New Mexico

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September 12, 1988

OPINION  
OF  
HAL STRATTON  
Attorney General

Opinion No. 88-54

By: Lyn Hebert  
Assistant Attorney General

To: Honorable Carlos R. Cisneros  
New Mexico State Senator  
P.O. Box 1129  
Questa, New Mexico 87556

QUESTION:

Can the residents of Amalia, an unincorporated area in Taos County, petition the District Court in Taos County to form a water and sanitation district?

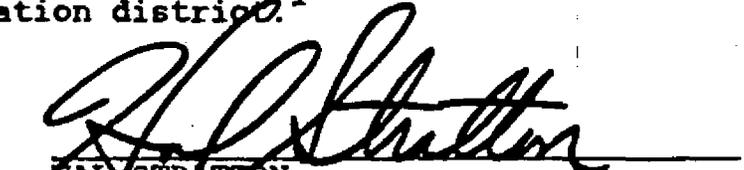
CONCLUSION:

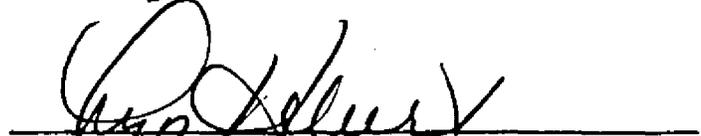
No.

ANALYSIS:

The Water and Sanitation District Act ("Act"), Sections 73-21-1 through 73-21-54 NMSA 1978, establishes the requirements for creating a water and sanitation district. Subsection 72-21-6(A) states, in part: "The organization of a district shall be initiated by a petition filed in the office of the clerk of the court vested with jurisdiction in a county in which all or part of the real property in the proposed district is situated." If the court determines that the petition meets the requirements of the Act, residents of the proposed district vote on whether to create the district. Section 73-21-9. Since 1985, Subsection 73-21-4(F) has defined "county" as "any class A county or any class B county with an official population shown by the most recent federal decennial census to be greater than ninety thousand." We understand and assume that Taos County is a class B county with a population of approximately 19,000. The Act's definition of "county" therefore does not encompass Taos County, and the

district court for Taos County would not have jurisdiction to establish a water and sanitation district.<sup>1</sup>

  
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1 The Legislature first created the statutory scheme for water and sanitation districts in 1943, but did not place any restrictions based on county population until 1985. Thus, our opinion is not inconsistent with Att'y Gen. Op. 76-33 (1976) which concluded that a water and sanitation district had been formed legally in Taos County.