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STATE CAPITOL
PHOENIX, ARIZONA

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DEPARTMENT OF LAW OPINION NO. 68-14 (R-56)

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REQUESTED BY: THE HONORABLE HAROLD A. BEELAR,
Gila County Attorney

QUESTION: Can a county enact a county curfew ordinance regarding the activity of teenagers, that is to say, a curfew law which affects minor children to the age of eighteen years?

ANSWER: No.

The powers of a county insofar as applicable to the question under consideration are set forth in the following Arizona Constitutional provisions and statutes:

Arizona Constitution, Article XII, § 1:

"Each county of the State, now or hereafter organized, shall be a body politic and corporate."

Arizona Constitution, Article XII, § 3, as amended in 1964:

"There are hereby created in and for each organized County of the State the following officers who shall be elected by the qualified electors thereof: a Sheriff, a County Attorney, a Recorder, a Treasurer, an Assessor, a Superintendent of Schools and at least three Supervisors, each of whom shall be elected and hold his office for a term of four (4) years beginning on the first of January next after his election, which number of Supervisors is subject to increase by law. The Supervisors shall be nominated and elected from districts as provided by law.

"The candidates for these offices elected in the general election of November 3, 1964 shall take office on the first day of January, 1965 and shall serve until the first day of January, 1969. As amended, election Nov. 3, 1964, eff. Dec. 3, 1964."

Arizona Constitution, Article XII, § 4:

"Section 4. The duties, powers, and qualifications of such officers shall be as prescribed by law. The Board of Supervisors of each county is hereby empowered to fix salaries for all county and precinct officers within such county for whom no compensation is provided by law, and the salaries so fixed shall remain in full force and effect until changed by general law."
(Emphasis added.)

A.R.S. § 11-201:

"The powers of a county shall be exercised only by the board of supervisors or by agents and officers acting under its authority and authority of law. It has the power to:

- "1. Sue and be sued.
- "2. Purchase and hold lands within its limits.
- "3. Make such contracts and purchase and hold such personal property as may be necessary to the exercise of its powers.
- "4. Make such orders for the disposition or use of its property as the interests of the inhabitants of the county require.
- "5. Levy and collect taxes for purposes under its exclusive jurisdiction as are authorized by law."

A.R.S. § 11-202:

"A. Each county is a body politic and corporate, possessing all the powers expressly provided in the Constitution or laws of this state and such powers as are necessarily implied therefrom.

"B. The name of the county designated in article 1, chapter 1 of this title is its corporate name by which it shall be known and designated in all actions and proceedings."

A.R.S. § 11-251, as amended in 1963 and 1965:

"The board of supervisors, under such limitations and restrictions as are prescribed by law, may:

". . . .

"29. Do and perform all other acts and things necessary to the full discharge of its duties as the legislative authority of the county government.

"30. Make and enforce all local, police, sanitary and other regulations not in conflict with general law. As amended Laws 1963, Ch. 37, § 1; Laws 1965, Ch. 96, § 1."

As can be seen from an examination of the above Constitutional provisions and statutes, counties have only such powers as have been delegated to them. The Arizona Supreme Court in Associated Dairy Products Co. v. Page, 68 Ariz. 393, 206 P.2d 1041, at page 395 of the Arizona Reports, states:

"[1-3] The boards of supervisors of the various counties of the state have only such powers as have been expressly or by necessary implication, delegated to them by the state legislature. Hartford Accident and Indemnity Co. v. Wainscott,

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"41 Ariz. 439, 19 P.2d 328; Maricopa County v. Southern Pacific Co., 63 Ariz. 342, 162 P.2d 619. Implied powers do not exist independently of the grant of express powers and the only function of an implied power is to aid in carrying into effect a power expressly granted. Therefore, unless there has been an express grant of power by the legislature to the board to enact the ordinance here involved, it must be held to be invalid, regardless of whether the subject of said ordinance is of local or state-wide concern."

The following language of the Court in Associated Products Co. v. Page, supra, appears to be applicable to the question under discussion:

"By the terms 'expressly empower' and 'express power' as used in the language of the court in the case of Clayton v. State, 38 Ariz. 466, 300 P. 1010, and Keller v. State, 46 Ariz. 106, 47 P.2d 442, is meant that authority which confers powers to do a particular thing set forth and declared exactly, plainly and directly with well defined limits. 'An express authority is one given in direct terms, definitely and explicitly, and not left to inference or to implication, as distinguished from authority which is general, implied, or not directly stated or given.' Fergus v. Brady, 277 Ill. 272, 115 N.E. 393, Ann. Cas. 1918B, 220, at page 223.

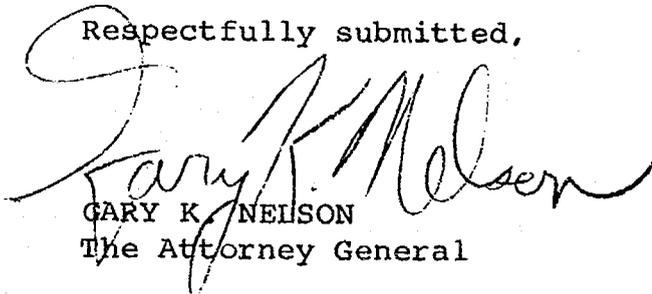
"Under the above definition it seems clear that no express power has been granted to the boards of supervisors of the counties of the state to pass an ordinance such as the one in question. We believe the above definition of express authority is conclusive upon the question of the legislative grant here under discussion. Certainly there is nothing in the granting of

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"power in any of these sections that would warrant the board of supervisors in passing a criminal statute and fixing a penalty for its violation."

An examination of the Constitutional provisions, the statutes and the cases regarding counties leads this office to the conclusion that a county has no authority to enact a curfew ordinance regarding the activities of minors under the age of eighteen years. Any change in the powers enumerated in § 11-201, supra, would require action by the Legislature to give the counties the power to impose a curfew.

Respectfully submitted,



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