

**To: The Honorable Jake Flake  
Arizona House of Representatives**

**May 21, 2001**

**Re: County Authority to Enact Ordinances  
I01-012 (R00-081)**

### **Questions Presented**

Pursuant to Arizona Revised Statutes ("A.R.S.") § 11-251.05(A)(1), counties may adopt ordinances "necessary or proper to carry out the duties, responsibilities and functions of the county which are not otherwise specifically limited . . . by § 11-251 or any other law or in conflict with any rule or law of this state." Does this statute give counties the authority to enact ordinances on all matters that are not limited by or in conflict with state laws?

### **Summary Answer**

No. A county may only enact an ordinance that is (1) within the county's "duties, responsibilities and functions" as determined by state law and (2) not limited by or in conflict with state law. Thus, whether or not an ordinance is limited by or in conflict with state law, the ordinance must still be within the county's duties, responsibilities and functions under state law.

### **Background**

Counties are "created by the legislature . . . for the purpose of exercising a certain portion of the general powers of the government in specified localities." *Associated Dairy Prod. Co. v. Page*, 68 Ariz. 393, 396, 206 P.2d 1041, 1043 (1949). The territorial counties, which were fixed by statute when the constitution was adopted, were the counties of Arizona "until changed by law." Ariz. Const. art. XII § 2. The Constitution also specifies certain county officers, including "at least three Supervisors," who must be elected, and directs that "[t]he duties, powers, and qualifications of such officers shall be as prescribed by law." *Id.* at §§ 3, 4. <sup>(1)</sup>

The duties of the county board of supervisors ("board") are set forth in statute. A.R.S. § 11-251. A.R.S. §§11-251 enumerates 60 powers of the board, and other statutes throughout Title 11 (which governs counties) list additional subjects the board may address. *See, e.g.*, A.R.S. §§ 11-251 to -251.11. Some of these statutes authorize ordinances on particular subjects. *See, e.g.*, A.R.S.

§ 11-251(40) (curfews), (37) (licensing of certain businesses located in unincorporated areas). Section 11-251.05(A)(1) addresses ordinances in general by providing that the board may:

[i]n the conduct of county business, adopt, amend and repeal all ordinances necessary or proper to carry out the duties, responsibilities and functions of the county which are not otherwise specifically limited by § 11-251 or any other law or in conflict with any rule or law of this state.

The legislative history of A.R.S. § 11-251.05(A)(1) reflects a desire to expand the ability of counties to address issues that may arise without seeking specific legislative authorization. <sup>(2)</sup> In 1983, a proponent of the legislation that resulted in A.R.S. § 11-251.05(A)(1) noted the

measure would cut down on the amount of legislation the counties would require each year from the Legislature. *Minutes of House of Representatives Comm. on Counties and Municipalities, Re: HB 2105, 36th Leg., 1st Reg. Sess. (January 27, 1983)*. See also, *Minutes of House Comm. on Gov't Operations, Re: HB 2105, 36th Leg., 1st Reg. Sess. (March 9, 1983)*. Similarly, when discussing legislation to further amend that law in 1988, a supporter indicated the measure was intended to "enable counties to pass an ordinance when a problem comes before the county . . . without coming to the Legislature each time to get enabling legislation passed." *Minutes of House Comm. on Counties and Municipalities, Re: HB 2046, 38th Leg., 2nd Reg. Sess. (February 11, 1988)*.<sup>(3)</sup>

### **Analysis**

Arizona courts have consistently recognized that "a county has only those powers that have been expressly, or by necessary implication, delegated to it by the legislature or the constitution." See, e.g., *Southwest Gas Corp. v. Mohave County*, 188 Ariz. 506, 508, 937 P.2d 696, 698 (App. 1997) (emphasis in original omitted); see also A.R.S. § 11-202(A) ([e]ach county . . . possess[es] all the powers expressly provided in the Constitution or laws of this state and such powers as are necessarily implied therefrom.) "[L]egislative powers of counties are very limited." *Hancock v. McCarroll*, 188 Ariz. 492, 498, 937 P.2d 682, 688 (App. 1996). Courts have also noted that an "absence of a statutory prohibition does not mean the county has inherent authority to engage in certain conduct." *Id.*

In view of these limitations on county authority, A.R.S. § 11-251.05(A)(1) does not authorize counties to adopt *any* ordinance as long as the ordinance is not limited by or in conflict with a state law. The statute has two parts: First, it requires that a county ordinance be "necessary or proper to carry out the duties, responsibilities and functions of the county." *Id.* Second, a county ordinance must not be limited by A.R.S. § 11-251 or otherwise inconsistent with state law. *Id.* The scope of a county's "duties, responsibilities and functions" are not determined by A.R.S. § 11-251.05(A). Instead, other state laws must be examined to determine whether the subject of an ordinance is within the "duties, responsibilities and functions" of the county. Some recent examples of how courts have addressed questions of county authority illustrate this point.

In *Hancock v. McCarroll*, the Court of Appeals addressed whether a citizen could bring an initiative to dissolve a county stadium district formed as a result of an action by the board of supervisors, 188 Ariz. at 497, 937 P.2d at 687. Because a citizen initiative by county electors is only appropriate on issues on which counties have legislative authority, the court addressed whether a county had the authority to repeal a resolution that authorized the formation of a stadium district. *Id.* Citing A.R.S. § 11-251.05(A)(1), the court concluded a county lacks that authority because such a repeal is not "necessary or proper to carry out the duties, responsibilities and functions of the county." *Id.* at 498, 937 P.2d at 688. The court noted that "these duties are set forth in A.R.S. §§ 11-251 to -269.02 (Supp. 1996) and include no authority to conduct the affairs of a stadium district." *Id.*

In 1991, the Supreme Court held that Pima County had the authority to enact an

ordinance requiring licensing of "adult amusement establishments." *Marsoner v. Pima County*, 166 Ariz. 486, 489, 803 P.2d 897, 900 (1991). The county ordinance was designed to limit the spread of human immunodeficiency virus. The Supreme Court noted that the powers of the board of supervisors are enumerated in A.R.S. § 11-251 and that statute authorized the board to "[a]dopt provisions necessary to preserve the health of the county, and provide for the expenses thereof." *Id.* Given the broad authority in A.R.S. § 11-251(17) and certain public health statutes, A.R.S. §§ 36-184(B) and -136, the court concluded that Pima County had the authority to adopt its licensing ordinance. *Id.* Although the court did not discuss A.R.S. § 11-251.05(A)(1), its analysis is consistent with the principle that the scope of a county's duties, and responsibilities and functions is determined by a specific statutory analysis. This case also illustrates that the Legislature's broad grant of authority to a county to address a subject (such as health) may justify a wide range of local ordinances. This, too, is consistent with A.R.S. § 11-251.05(A)(1) which gives counties wide discretion to adopt ordinances if the subject is within the county's "duties, responsibilities and functions" and the ordinance is otherwise consistent with state law.

### **Conclusion**

Counties may enact ordinances only on subjects within the counties' duties, responsibilities, and functions under state law.

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1. In addition, in 1992, Arizona voters approved a constitutional amendment referred by the Legislature to authorize the creation of charter counties in counties of more

than 500,000 persons. *See* Ariz. Const. art. 12, §§ 5 to 9. No charter counties currently exist.

2. When enacted in 1983, this statute provided that the board of supervisors may "[w]ith respect to those powers vested in the board of supervisors by section 11-251 that are applicable to the unincorporated areas of the county, adopt, amend, and repeal all ordinances necessary or proper to carry into effect such powers. 1983 Ariz. Sess. Law, ch. 223. The Legislature subsequently amended the statute in 1988 and 1991. *See* 1988 Ariz. Sess. Laws ch. 231 and 1991 Ariz. Sess. Laws ch. 147.

3. The Legislature addressed this issue again in 2001 in a measure vetoed by the Governor. *See* HB 2357, 45th Legis., 1st Reg. Sess. (2001); Letter from Governor Jane Dee Hull to Speaker of the House Jim Weiers (April 23, 2001) (veto message).

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