



**THE ATTORNEY GENERAL  
OF TEXAS**

November 29, 1989

**JIM MATTOX  
ATTORNEY GENERAL**

Honorable H. Tati Santiesteban  
Chairman  
Natural Resources Committee  
Texas State Senate  
P. O. Box 12068  
Austin, Texas 78711

LO-89-101

Dear Senator Santiesteban:

We have received your letter of November 13, 1989, in which you express regret that our Letter Opinion LO-89-85 (1989) did not clarify Socorro's status as either a special-law or general-law municipality. Unfortunately, the question of Socorro's status cannot be resolved in the opinion process. The Attorney General is without authority to resolve fact questions and is confined to rendering opinions on questions of law only. See Attorney General Opinions O-3382 (1941); O-2911 (1940). We cannot gather evidence or decide the weight to be accorded to the evidence. Attorney General Opinion O-3382 (1941).

In addressing your question about the status of Socorro, we had to rely on the facts submitted to us and base our ruling as to the law on the presumed truth of those facts. We cannot investigate or resolve underlying fact questions, such as whether attempts to disincorporate were made after the opinion in Pence v. Cobb, 155 S.W. 608 (Tex. Civ. App. - El Paso 1913, no writ). It appears that an exhaustive search of relevant legal records of El Paso County and possibly other archives would be a first step toward a resolution of the question. If records were discovered that gave conflicting information, they would have to be evaluated by a tribunal that could address the weight of evidence. These undertakings are outside the authority of this office.

In the third paragraph of your letter you ask whether the limitation of 10,000 inhabitants set out in section

62.001 of the Local Government Code applies only to special-law municipalities. Section 62.001 provides as follows:

A special-law municipality with 10,000 or fewer inhabitants or a general-law municipality may abolish its corporate existence as provided by this subchapter. (Emphasis added.)

Local Gov't Code § 62.001. The "10,000 inhabitants" requirement applies only to special-law municipalities, as can be seen when this provision is read in its entirety.

You mention the Act of April 27, 1895, which was referred to in Pence v. Cobb. This law deals with the abolition of corporate existence. It was originally codified as articles 1077 through 1096 of the 1911 codification, subsequently codified as articles 1241 through 1263, V.T.C.S (1925), and is now codified as chapter 62 of the Local Government Code. Letter Opinion LO-89-85 addressed this chapter of the Local Government Code.

You finally point out that this office has not addressed the issue of whether a de facto corporation has ever been created. A de facto corporation may exist where there is a bona fide attempt to incorporate under existing statutory authority, and an assumption of corporate powers, but a defect in the proceedings of incorporation prevents it from coming into existence as a de jure corporation. 1 E. McQuillian Municipal Corporations §§ 3.48 - 3.48c (3d ed. 1971). Under these circumstances, the courts may recognize a municipality as a de facto corporation on the grounds of public policy in all proceedings except a direct attack by the state questioning its corporate existence. Id. § 3.48. Determining that a de facto corporation has been created requires the investigation and resolution of fact questions. An attorney general opinion could set out the law regarding a de facto corporation, but could not make the fact findings necessary to determine that a de facto corporation had been formed.

In summary, your question about the incorporation status of Socorro is one that defies resolution through the opinion process, because the answer requires the resolution of fact questions. We have given the assistance that we are authorized to give by addressing the legal questions

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submitted to us. I regret that we are unable to provide the assistance you wish in resolving this most perplexing question.

Very truly yours,

*Susan L. Garrison*

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SLG/er

Ref.: ID-8145

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