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## **SOME COMMON QUESTIONS ABOUT INCORPORATION OF NEW MEXICO MUNICIPALITIES**

The actual mechanics of municipal incorporation are fairly understandable in the New Mexico statutes [*Sections 3-2-1 through 9, NMSA 1978, as amended*], which are attached. But there are several other basic considerations about which those considering incorporation ask the New Mexico Municipal League. The following is an attempt to answer the most frequently asked questions according to current provisions. Also attached is a copy of *Municipal Sources of Revenue in New Mexico*.

**Q: WHO PAYS FOR THE CENSUS, BOUNDARY MAP, AND INCIDENTAL LEGAL OR OTHER EXPENSES IN GETTING AN INCORPORATION MOVEMENT STARTED?**

A: The statutes don't say. In the last five incorporations, those interested in incorporation volunteered a sufficient amount to cover them.

**Q: WHO PAYS FOR THE INCORPORATION ELECTION?**

A: The county that conducts it.

**Q: WHAT KIND OF GOVERNMENT WILL THE MUNICIPALITY HAVE?**

A: A new municipality always starts with the mayor-council form of government. Change to a commission-manager form or a home rule charter form requires a subsequent election after the municipality is incorporated and operating. Most municipalities have chosen to remain with the mayor-council form.

**Q: HOW MANY ELECTED OFFICES WOULD THE MUNICIPALITY HAVE?**

A: A minimum of six: mayor, judge, and at least four councilors or trustees. There may be no less than four and no more than ten councilors or trustees -- the statutes do not say who determines the number but there is no reason that could not be a part of the petition for incorporation. Inclusion in the petition would not put the number onto the incorporation vote ballot, but it should create a sort of moral obligation for the county commissioners to announce that number of councilor or trustee vacancies in proclaiming the election of first officials following incorporation.

**Q: HOW LONG WILL THE TERMS OF THE FIRST ELECTED OFFICIALS BE?**

A: That depends upon when the incorporation election is held. Regular municipal elections are always the first Tuesday of March in even-numbered years. The incorporation statutes authorize incorporation elections only in July in odd-numbered years and in January of any year, with the incorporation to be effective and the first officials to assume office on the following January 1 or July 1 respectively. Of the first elected officials, the mayor, the judge and one-half of the councilors/trustees as determined by lot shall serve until the next regular election (that is, the first Tuesday in March of the next even-numbered year); the other one-half of the councilors/trustees will serve until the second regular election. The following table shows the approximate length of terms of first elected officials:

<u>Term of Mayor, Judge</u> <u>Date of Inc.</u> <u>Election</u>	<u>Date of ½ of Trustees or</u> <u>Councilors</u>  <u>Taking Office</u>	<u>Term of Other</u> <u>½ of Trustees or</u> <u>Councilors</u>
July, odd year 26 months	January, even year	2 months
January, odd year 32 months	July, odd year	8 months
January, even year 44 months	July, even year	20 months

Successive terms are four years. Terms of mayor and councilor/trustees maintain the same cycles, but if a judge resigns or dies, the judge elected at the next regular election has a four-year term regardless of whether his predecessor's term had expired.

**Q: WHAT NON-ELECTED OFFICES MUST THE MUNICIPALITY HAVE?**

A: The statutes mandate a police officer, a municipal clerk, and a municipal treasurer; the jobs of clerk and treasurer may be combined and filled by one person. These can be either part-time or full-time jobs depending upon what duties you expect to have performed. All other jobs may be established as needed and as the municipality can afford.

**Q: WHAT CAN THE NEW MUNICIPALITY BE NAMED?**

A: That is up to those who draft the petition. It may be either a city, town, or village (there are no population or area requirements designating these titles in New Mexico), but the name cannot be the same as that of any existing incorporated municipality.

**Q: WILL PROPERTY TAXES AUTOMATICALLY GO UP IF INCORPORATION IS APPROVED?**

A: Not exactly automatically; the question as to whether or not the Secretary of Finance and Administration allows the municipal portion of ad valorem (property) taxes to be imposed depends upon the municipality's overall revenue picture and whether the ad valorem tax is needed to meet budget. However, there is a ceiling on the municipal share of 7.65 mills or \$7.65 per \$1,000 of taxed valuation.

**Q: WHAT ABOUT PAVING AND SEWERS AND OTHER PROJECTS; AREN'T THOSE PAID THROUGH PROPERTY TAXES?**

A: What you are talking about is an assessment for a special improvement district. The municipal governing body, after appropriate notice and public input, may vote a special improvement district for such things as extending water or sewer lines or for paving, curb and gutter or sidewalks. These assessments are usually based on front footage of the property to the street and nearness to the improvement and are paid only by the property owners who benefit directly from the improvement. For capital improvements of city-wide value, there are also general obligation bond levies, which are assessments on all property owners in the municipality; however, these must be approved by the majority of voters at a city-wide election prior to imposing the obligation.

**Q: DO SALES TAXES AUTOMATICALLY GO UP?**

A: No. What is called sales tax by the public is actually a tax on the gross receipts of the various businesses. (For all intents and purposes, the idea is the same, but you might as well use the term employed by law, which is gross receipts tax.) The state collects statewide gross receipts tax of 5 %, of which 1.225 % will be returned to any incorporated municipality in which those revenues are collected. (The provision in the incorporation statute which allows incorporation to be complete only on July 1 and January 1 is partly to satisfy reporting and distribution lead times for state-collected taxes such as gross receipts tax.)

In addition to the 1.225% received from the statewide GRT, a municipality has the option of imposing up to 1.25% as a municipal gross receipts tax, either in one action or in separate actions of .25% or more. If within thirty days after the ordinance imposing the tax is passed, a petition signed by 5% of the number of voters who were registered within the municipality at the last regular municipal election is received requesting an election, then the question of imposing the tax must be approved by a majority of voters at a special or regular election. The governing body may also choose to call for election in the ordinance itself. If no petition is received or if the voters approve the tax, it shall be enacted and become effective the January 1 or July 1 following. So, you can see that gross receipts taxes are an important part, (in fact the most important part), of municipal revenues. With potential of \$2.475 per \$100 of gross business transacted in the municipality, it is the best general revenue available.

A municipality may also impose a 1/16% (.000625) additional municipal gross receipts tax for environmental purposes (such as solid waste facilities, etc.) without the negative referendum provision, but that tax may not be used as general revenue -- it is dedicated.

A municipality may impose up to 1/4% (.00125) municipal gross receipts tax for infrastructure purposes, such as roads, bridges, water or sewer systems, etc. The first 1/8<sup>th</sup> is not subject to a referendum of any kind, but unlike the environmental gross receipts tax, it may be used for general purposes as well as infrastructure projects. However, if the tax is to be used for economic development purposes, it is subject to a referendum. A referendum is required to impose any portion of the second 1/8<sup>th</sup> of the infrastructure GRT.

A municipality may also impose a Capital Outlay Gross Receipts Tax for local infrastructure purposes in increments of 1/16<sup>th</sup> up to a maximum of 1/4%. The tax may be dedicated for various capital outlay purposes. It must be imposed prior to July 1, 2005 and is subject to referendum. A municipality may not impose this tax unless it has imposed all increments of the Municipal Gross Receipts Tax and the Municipal Infrastructure Tax.

**Q: WHAT COULD THE MUNICIPALITY BEING CONSIDERED FOR INCORPORATION EXPECT FROM AD VALOREM TAXES AND HOW MUCH FROM GROSS RECEIPTS TAXES?**

**A:** It depends upon the assessed valuation of property located within the municipality and the amount of taxable business actually conducted within the municipality, so a good, firm idea of the municipal limits is the starting point. From there the County Treasurer may be able to help you estimate municipal distribution of ad valorem taxes. The New Mexico Taxation and Revenue Department should be able to help you estimate possible gross receipts tax revenues by projecting on the basis of current and past state gross receipts taxes collected from businesses within those municipal limits. The Taxation and Revenue Department also collects and distributes Gasoline Tax and Cigarette Tax revenues, and they should be able to estimate municipal shares of those sales. Municipalities receive close to three cents per gallon tax on gasoline sold within municipal limits (one cent of which must be used for streets, bridges and mass transit purposes) and three cents per pack on cigarettes sold within municipal limits, one cent of which may be spent only for public recreation purposes. The Local Government Division also would be a good contact for most of the revenue and expense estimates you should have in considering the feasibility of incorporation. You should probably contact them in writing after your proposed city limits have been set.

**Q: IS THERE ANY SPECIAL FINANCIAL HELP AVAILABLE FOR SMALLER MUNICIPALITIES?**

**A:** Yes. The Small Cities Assistance Act is designed to help municipalities under 10,000 population which do not have a very good gross receipts tax base because of less business done in their municipalities. Ten percent of the State Compensating Tax is earmarked for distribution to aid municipalities under 10,000 in population. All money in the Fund is

distributed to qualifying municipalities. Qualifying municipalities receive a minimum distribution of \$35,000, but may receive additional funding by operation of a formula-based average per capita gross receipts tax. Money can be used for general purposes or as allocated by the governing body.

**Q: WHAT OTHER GENERAL REVENUES ARE AVAILABLE TO MUNICIPALITIES?**

A: Businesses that require regulation or additional enforcement by the municipality because of health or safety factors involved in their operations may be licensed. Examples might be laundries, taxi services, cleaning shops, pool halls, amusement parks, or several other types of operations. The purpose of licensing, however, is to identify those businesses that will require additional regulatory service on the part of the municipality and to collect a licensing fee that will serve to offset in part those additional services. The statutes require that fees for the various licenses must bear a reasonable relation to the cost of those added municipal services and that licensing may not be used as a revenue producing device. Municipalities must require by ordinance that every unlicensed business in the city register with the city and pay a uniform annual business registration fee, not to exceed \$35 per registration. If the municipality requires a business to be licensed, it cannot also collect the registration fee. For purposes of registration, a business with several locations must register each location and a business operating various types of businesses under various names must register each separately.

**Q: ISN'T THERE SOME INCOME AVAILABLE FROM FRANCHISES?**

A: Under ordinary circumstances, a municipality may grant franchises to public utilities, including cable television systems, to use the public streets etc, for their operations and installations. Ordinarily the utility pays the municipality for this privilege at so much per year over the length of the franchise, and the amount may be negotiated when the franchise is renewed. When an area which already was served by certain utilities becomes incorporated, the statutes require that the new municipality must give those franchisees a municipal franchise with the same powers, rights, conditions, and fees as were agreed to by the county commission in the prior franchise. No additional income should be expected except when the franchise is renewed or when a new and different utility wishes to do business with the city.

**Q: ARE THERE ANY SPECIAL ITEMS THOSE THINKING ABOUT INCORPORATION SHOULD CONSIDER BEFORE GETTING TOO DEEPLY INVOLVED IN THE PROCESS?**

A: There are some serious questions that we would certainly ask if we were involved in the incorporation discussions. They might prove useful in stimulating self-appraisal for the idea of incorporating. Here are five preliminary questions:

- How much taxable business is actually transacted in the area proposed for incorporation itself and will it produce sufficient gross receipts tax to support a municipality?
- What is the outlook for future growth in both homes and businesses? Local councils of government and the county planning office (if any) may be able to supply projected data on this.
- Will your municipality be able to grow? Will usable land, potable water, etc. be available for your municipality to grow? If the area you propose to incorporate is too close to an existing city, you may have to seek annexation before trying to incorporate and such annexation may be a better way of accomplishing your purposes than incorporating.
- For what reasons are the local people considering the incorporation and would those reasons be able to be satisfied within the powers granted to municipalities by statute?
- Could the problems be solved or the services obtained by bringing more pressure to bear on existing county government, as an alternative to incorporating?

Lest anyone think that we are trying to discourage incorporation, let us stress that the League is completely neutral on the matter. Our purpose in raising these queries is only to anticipate some of the questions others may ask and to prompt the prospective citizens to thoughtful consideration of the responsibilities that accompany incorporation.

**Q: ABOVE AND BEYOND THE STATUTORY REQUIREMENTS FOR ASKING FOR INCORPORATION, ARE THERE ANY PRACTICAL STANDARDS THAT A PROPOSED MUNICIPALITY SHOULD MEET?**

A: There is no fool-proof formula to determine when a place should incorporate and when it should not; that decision is up to the residents. A major indicator, however, would be its viability. Viability in this case means: Can incorporation reasonably be expected to accomplish the aims and effects for which the incorporation is proposed? New Mexico law prohibits any public entity from expending more in any fiscal year than it takes in during that fiscal year; in other words, deficit spending is not allowed. There are definite restrictions and limits on the ways in which certain receipts may be used -- many types of revenues may be used only for capital improvements and not for operating expenses.

For example, some municipalities that have had state or federal grant funding to help build new sewer or water systems find they are up against the wall in generating sufficient user charges to pay for operating those new systems, particularly in the face of inflated prices for personnel, energy, and chemical supplies, as well as increasingly stringent state and federal regulations.

**Q: IS THERE ANY PRACTICAL WAY TO ASSESS THE VIABILITY OF THE PROPOSED MUNICIPALITY?**

A: Only rule-of-thumb. Each place has different reasons for considering incorporation, although they generally include the feeling that the county is not providing all the services the residents think they deserve, or the desire to have some local autonomy to tackle some specific projects. In any case, you should examine the goals for which you are considering incorporation in relation to the following:

- How much time will it take to accomplish your goals?
- What personnel will it take to accomplish them?
- How much money will they take and can the new municipality expect that level of revenues?
- How willing are the citizens to support these goals, both in time and additional funds if necessary?

You may find that a deficiency in any of those factors would prevent the proposed municipality from succeeding. Unless you can count on all four of them to be sufficient, incorporation could well be a mistake.