

JUN 22 1990

ORDINANCE NUMBER 14

and recorded in Book 201 Page 078
of Miscellaneous
Karen E. Parnell, County Clerk
Deputy
Reception No. 40-2237

AN ORDINANCE OF THE COUNTY OF LUNA, STATE OF NEW MEXICO, RELATING TO THE PROMOTION, SALE, DISTRIBUTION, AND EXHIBITION OF OBSCENE MATERIAL AS HEREIN DEFINED; DECLARING THE EXPLOITATION OF SUCH OBSCENE MATTER CONTRARY TO IMPROVEMENT OF THE MORALS AND GENERAL WELFARE; PROHIBITING THE EXHIBITION OF SUCH, THE SELLING OR POSSESSING THE SAME FOR SALE; ESTABLISHING THE PENALTY FOR VIOLATIONS; PROVIDING FOR COMPILATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE AND PUBLICATION.

WHEREAS, the Board of Luna County Commissioners do hereby find that the commercial exploitation of obscene matter is detrimental and contrary to the improvements of morals and to the general welfare of the County of Luna and of the residents, citizens, and inhabitants thereof; and,

WHEREAS, pursuant to Section 4-37-1, N.M.S.A., 1978, Compilation, a county is given those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of any county or its inhabitants. A county is granted the same powers that are granted a municipality except for those powers that are inconsistent with statutory or constitutional limitations placed on counties. Pursuant to Section 3-18-17, N.M.S.A., 1978 Compilation, a municipality by ordinance is allowed to define a nuisance, abate a nuisance, and impose penalties upon a person who creates or allows a nuisance to exist; and to prohibit and

suppress the sale, possession or exhibition of obscene publications, prints, pictures, or illustrations.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS,
THE GOVERNING BODY OF THE COUNTY OF LUNA:

SECTION I. PURPOSE; POLICY; AUTHORITY; EXCLUSION.

The Board of Luna County Commissioners, hereinafter Board, hereby declares the promotion, commercial exhibition or sale or possession for such purposes of obscene material as defined herein to be public nuisances per se. Nothing herein is intended to cover, affect, include or proscribe the specific conduct, matters or material which are prohibited or regulated as to minors by, or to apply to minors who are protected by Sections 30-37-1 through 30-37-8, N.M.S.A., 1978 Compilation. Neither is this Ordinance intended to apply to any matter used in a bona fide program of medical or psychological treatment, or a distributed or displayed nonprofit program by a publicly owned or other nonprofit library or educational institution, or used in a bona fide educational program of a bona fide for-profit educational institution; or while used, distributed, displayed or sold or held for use, distribution, display or sale exclusively under these conditions. Nor is this Ordinance intended to apply to possession of obscene material in a private home for exclusively private use.

SECTION II. DEFINITIONS.

A. In this Ordinance:

1. "Obscene" means material or a performance that:

- a. the average person, applying contemporary community standards, would find that taken as a whole, appeals to the prurient interest in sex.
- b. the average person, applying contemporary community standards, would find that it depicts or describes:
 - (1) Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or
 - (2) Patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernibly turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs; and,
- c. a reasonable person would find, taken as a whole, lacks serious literary, artistic, political, or scientific value.

2. "Material" means anything tangible that is capable of being used or adapted to arouse interest, whether through the

medium of reading, observation, sound, or in any other manner, which includes but is not limited to magazines, books, leaflets, pamphlets, booklets, pictures, photographs, drawings, films, negatives, videos, slides or motion pictures, but does not include an actual three dimensional obscene device.

3. "Promote" means to manufacture, issue, sell, give, provide, lease, rent, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same. Nothing herein shall be construed so as to restrict or prohibit the use of material or devices by adults in the privacy of personal residences not for monetary gain or valuable consideration.

4. "Obscene device" means a device including a dildo, or artificial vagina designed or marketed as useful primarily for the stimulation of human genital organs.

5. "Performance" means a play, motion picture, dance, or other exhibition performed before an audience.

6. "Community" means the geographical area of the County of Luna.

7. "Prurient interest" means a lascivious, shameful, or morbid interest in sex.

B. If any of the depictions or descriptions of sexual conduct described in this section are declared by a court of competent jurisdiction to be unlawfully included herein, this declaration shall not invalidate this section as to other patently offensive sexual conduct included herein.

SECTION III. OBSCENE DISPLAY OR DISTRIBUTION.

A. A person commits an offense if he, knowing its contents and character:

1. Promotes or possesses with intent to promote any obscene material or obscene device; or
2. Produces, presents, or directs an obscene performance.

B. An offense under this Ordinance is a misdemeanor punishable by a fine not to exceed \$300.00 or imprisonment for 90 days or both.

SECTION IV. DESTRUCTION OF MATERIALS SEIZED.

Any material or device, as previously defined in this Ordinance, seized pursuant to this Ordinance is contraband and shall be destroyed after obtaining an Order for its destruction from the Court.

SECTION V. COMPILATION.

This Ordinance shall be compiled and made a part of the Ordinances of the County of Luna.

SECTION VI. SEVERABILITY CLAUSE.

If any of the sections, subsections, sentences, clauses, phrases, or words of this Ordinance are for any reason held to be unconstitutional or invalid, the validity of the remaining portions of this Ordinance shall not be affected since it is the express intention of the county governing body to pass each section, phrase, paragraph and word separately.

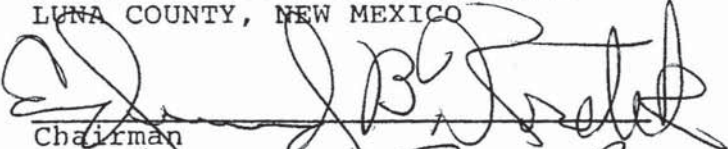
SECTION VII. HEARING.

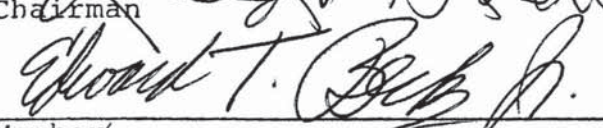
On the 8th day of June, 1990, a public hearing was held by the Board of Luna County Commissioners to consider the passage of ORDINANCE NUMBER 14, the "LUNA COUNTY, NEW MEXICO OBSCENITY ORDINANCE". All parties in interest and citizens had an opportunity to be heard. Notice of the date, time, and place of the hearing, and an outline, was published in a newspaper of general circulation once at least two weeks prior to the date of the hearing.

SECTION VIII. ADOPTION.

On this 8th day of June, 1990, after due consideration of the results of the public hearing described in the foregoing Section I, ORDINANCE NUMBER 14, "LUNA COUNTY, NEW MEXICO OBSCENITY ORDINANCE", is hereby adopted.


PASSED AND APPROVED BY:

BOARD OF COUNTY COMMISSIONERS
LUNA COUNTY, NEW MEXICO

Chairman


Member


Member

ATTEST:


County Clerk
Karen Parnell, Luna County Clerk


SECTION IX. CERTIFICATION.

I, Karen Parnell, Luna County Clerk,
hereby certify that ORDINANCE NUMBER 14, the "LUNA COUNTY,
NEW MEXICO OBSCENITY ORDINANCE", was passed and approved by the
Board of Luna County Commissioners on the 8th day of
June, 1990.

Karen E. Parnell
Karen, County Clerk

I certify that the requirements of Section 4-37-7,
N.M.S.A., 1978 Compilation, concerning notice, public hearing,
and necessary coordination have been complied with, and that
proof of publication is included herewith.

Karen E. Parnell
Karen, County Clerk

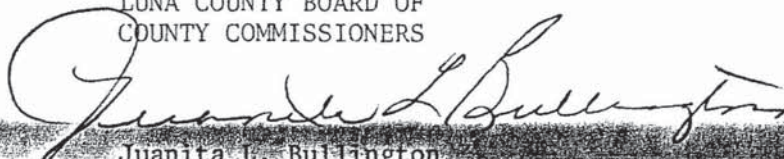
LEGAL NOTICE

The Luna County Board of County Commissioners will hold a Public Hearing on Friday, June 8, 1990, at 10:00 AM in the basement of the Luna County Courthouse/700 South Silver, Deming, New Mexico on proposed Ordinance No. 14, being an anti-obscenity ordinance.

Copies of the proposed ordinance are on file and available to the public in the office of the Luna County Clerk, 700 South Silver, Deming, New Mexico.

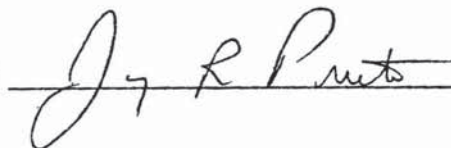
Meetings and Public Hearings of the Luna County Commissioners are accessible to the handicapped and public participation is encouraged.

LUNA COUNTY BOARD OF
COUNTY COMMISSIONERS


Juanita L. Bullington,
County Manager

Publish - The Deming Headlight, Friday, May 18, 1990
" " " " May 25, 1990

RECEIVED



DATE

5/15/90

COPIES SENT TO:

KOTS RADIO
SUN CABLE TV
MOUNTAIN BELL- PUBLIC AFFAIRS
BLM-PUBLIC AFFAIRS
all county offices

BOOK 20 PAGE 086

LEGAL ADVERTISING

CERTIFICATION OF PUBLICATION

STATE OF NEW MEXICO

I, Sammy M. Lopez

COUNTY OF LUNA

do solemnly swear that I am the publisher or associate publisher of the Deming Headlight, newspaper published at Deming, Luna County, New Mexico, and that the article, a copy of which is hereto attached, was

published in said (Headlight) for 2 times consecutively.

First publication being on the 18 day of May, 1990

Second publication being on the 25 day of May, 1990

Third publication being on the _____ day of _____, 19____

Fourth publication being on the _____ day of _____, 19____

Fifth publication being on the _____ day of _____, 19____

Legal Notice

LEGAL NOTICE

The Luna County Board of County Commissioners will hold a Public Hearing on Friday, June 8, 1990, at 10:00 AM in the basement of the Luna County Courthouse, 700 South Silver, Deming, New Mexico, on proposed Ordinance No. 14, being an anti-obscenity ordinance.

Copies of the proposed ordinance are on file and available to the public in the office of the Luna County Clerk, 700 South Silver, Deming, New Mexico.

Meetings and Public Hearings of the Luna County Commissioners are accessible to the handicapped and public participation is encouraged.

LUNA COUNTY BOARD OF COUNTY COMMISSIONERS

Juanita L. Bullington
County Manager
(No. 4894—21, 5-18, 5-25)

#693601
25 lines @ 49c

DEMING NEWSPAPERS, INC.

By

Patty Cicciotti
Bwd. Mgr.

Sworn to and subscribed before me the 18

day of May, 1990

My Commission expires 2-2-94

Book 20, p. 078

STATE OF NEW MEXICO } SS.
County of Luna
I certify that this instrument was filed
for record at 2:57 P. M.

JUN 12 1980

ORDINANCE NUMBER 14

and recorded in Book 20, Page 078-
of Miscellaneous 086
Karen E. Parnell, County Clerk
Deputy
Reception No. 40-2237

AN ORDINANCE OF THE COUNTY OF LUNA, STATE OF NEW MEXICO, RELATING TO THE PROMOTION, SALE, DISTRIBUTION, AND EXHIBITION OF OBSCENE MATERIAL AS HEREIN DEFINED; DECLARING THE EXPLOITATION OF SUCH OBSCENE MATTER CONTRARY TO IMPROVEMENT OF THE MORALS AND GENERAL WELFARE; PROHIBITING THE EXHIBITION OF SUCH, THE SELLING OR POSSESSING THE SAME FOR SALE; ESTABLISHING THE PENALTY FOR VIOLATIONS; PROVIDING FOR COMPILATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE AND PUBLICATION.

WHEREAS, the Board of Luna County Commissioners do hereby find that the commercial exploitation of obscene matter is detrimental and contrary to the improvements of morals and to the general welfare of the County of Luna and of the residents, citizens, and inhabitants thereof; and,

WHEREAS, pursuant to Section 4-37-1, N.M.S.A., 1978. Compilation, a county is given those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of any county or its inhabitants. A county is granted the same powers that are granted a municipality except for those powers that are inconsistent with statutory or constitutional limitations placed on counties. Pursuant to Section 3-18-17, N.M.S.A., 1978 Compilation, a municipality by ordinance is allowed to define a nuisance, abate a nuisance, and impose penalties upon a person who creates or allows a nuisance to exist; and to prohibit and

suppress the sale, possession or exhibition of obscene publications, prints, pictures, or illustrations.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS,
THE GOVERNING BODY OF THE COUNTY OF LUNA:

SECTION I. PURPOSE; POLICY; AUTHORITY; EXCLUSION.

The Board of Luna County Commissioners, hereinafter Board, hereby declares the promotion, commercial exhibition or sale or possession for such purposes of obscene material as defined herein to be public nuisances per se. Nothing herein is intended to cover, affect, include or proscribe the specific conduct, matters or material which are prohibited or regulated as to minors by, or to apply to minors who are protected by Sections 30-37-1 through 30-37-8, N.M.S.A., 1978 Compilation. Neither is this Ordinance intended to apply to any matter used in a bona fide program of medical or psychological treatment, or a distributed or displayed nonprofit program by a publicly owned or other nonprofit library or educational institution, or used in a bona fide educational program of a bona fide for-profit educational institution; or while used, distributed, displayed or sold or held for use, distribution, display or sale exclusively under these conditions. Nor is this Ordinance intended to apply to possession of obscene material in a private home for exclusively private use.

SECTION II. DEFINITIONS.

A. In this Ordinance:

1. "Obscene" means material or a performance that:

- a. the average person, applying contemporary community standards, would find that taken as a whole, appeals to the prurient interest in sex.
- b. the average person, applying contemporary community standards, would find that it depicts or describes:
 - (1) Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or
 - (2) Patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernibly turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs; and,
- c. a reasonable person would find, taken as a whole, lacks serious literary, artistic, political, or scientific value.

2. "Material" means anything tangible that is capable of being used or adapted to arouse interest, whether through the

medium of reading, observation, sound, or in any other manner, which includes but is not limited to magazines, books, leaflets, pamphlets, booklets, pictures, photographs, drawings, films, negatives, videos, slides or motion pictures, but does not include an actual three dimensional obscene device.

3. "Promote" means to manufacture, issue, sell, give, provide, lease, rent, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same. Nothing herein shall be construed so as to restrict or prohibit the use of material or devices by adults in the privacy of personal residences not for monetary gain or valuable consideration.

4. "Obscene device" means a device including a dildo, or artificial vagina designed or marketed as useful primarily for the stimulation of human genital organs.

5. "Performance" means a play, motion picture, dance, or other exhibition performed before an audience.

6. "Community" means the geographical area of the County of Luna.

7. "Prurient interest" means a lascivious, shameful, or morbid interest in sex.

B. If any of the depictions or descriptions of sexual conduct described in this section are declared by a court of competent jurisdiction to be unlawfully included herein, this declaration shall not invalidate this section as to other patently offensive sexual conduct included herein.

SECTION III. OBSCENE DISPLAY OR DISTRIBUTION.

A. A person commits an offense if he, knowing its contents and character:

1. Promotes or possesses with intent to promote any obscene material or obscene device; or
2. Produces, presents, or directs an obscene performance.

B. An offense under this Ordinance is a misdemeanor punishable by a fine not to exceed \$300.00 or imprisonment for 90 days or both.

SECTION IV. DESTRUCTION OF MATERIALS SEIZED.

Any material or device, as previously defined in this Ordinance, seized pursuant to this Ordinance is contraband and shall be destroyed after obtaining an Order for its destruction from the Court.

SECTION V. COMPILATION.

This Ordinance shall be compiled and made a part of the Ordinances of the County of Luna.

SECTION VI. SEVERABILITY CLAUSE.

If any of the sections, subsections, sentences, clauses, phrases, or words of this Ordinance are for any reason held to be unconstitutional or invalid, the validity of the remaining portions of this Ordinance shall not be affected since it is the express intention of the county governing body to pass each section, phrase, paragraph and word separately.

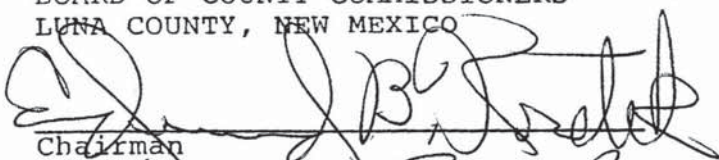
SECTION VII. HEARING.

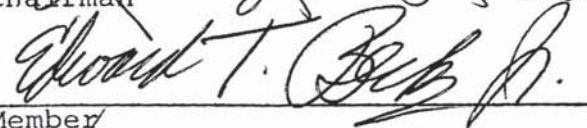
On the 8th day of June, 1990, a public hearing was held by the Board of Luna County Commissioners to consider the passage of ORDINANCE NUMBER 14, the "LUNA COUNTY, NEW MEXICO OBSCENITY ORDINANCE". All parties in interest and citizens had an opportunity to be heard. Notice of the date, time, and place of the hearing, and an outline, was published in a newspaper of general circulation once at least two weeks prior to the date of the hearing.

SECTION VIII. ADOPTION.

On this 8th day of June, 1990, after due consideration of the results of the public hearing described in the foregoing Section I, ORDINANCE NUMBER 14, "LUNA COUNTY, NEW MEXICO OBSCENITY ORDINANCE", is hereby adopted.


PASSED AND APPROVED BY:

BOARD OF COUNTY COMMISSIONERS
LUNA COUNTY, NEW MEXICO

Chairman


Member


Member

ATTEST:


Karen Parnell, Luna County Clerk


SECTION IX. CERTIFICATION.

I, Karen Parnell, Luna County Clerk,
 hereby certify that ORDINANCE NUMBER 14, the "LUNA COUNTY,
 NEW MEXICO OBSCENITY ORDINANCE", was passed and approved by the
 Board of Luna County Commissioners on the 8th day of
June, 1990.

Karen E. Parnell
Karen E. Parnell, County Clerk

I certify that the requirements of Section 4-37-7,
 N.M.S.A., 1978 Compilation, concerning notice, public hearing,
 and necessary coordination have been complied with, and that
 proof of publication is included herewith.

Karen E. Parnell
Karen E. Parnell, County Clerk

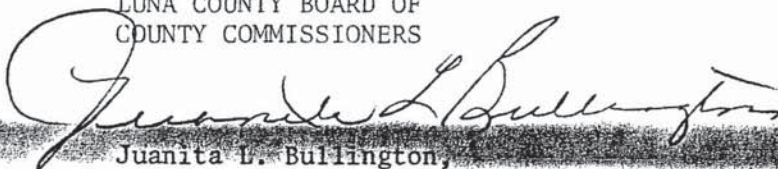
LEGAL NOTICE

The Luna County Board of County Commissioners will hold a Public Hearing on Friday, June 8, 1990, at 10:00 AM in the basement of the Luna County Courthouse/700 South Silver, Deming, New Mexico on proposed Ordinance No. 14, being an anti-obscenity ordinance.

Copies of the proposed ordinance are on file and available to the public in the office of the Luna County Clerk, 700 South Silver, Deming, New Mexico.

Meetings and Public Hearings of the Luna County Commissioners are accessible to the handicapped and public participation is encouraged.

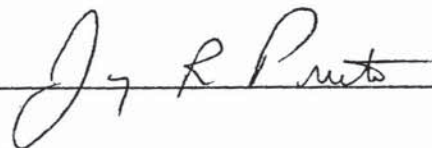
LUNA COUNTY BOARD OF
COUNTY COMMISSIONERS



Juanita L. Bullington,
County Manager

Publish - The Deming Headlight, Friday, May 18, 1990
" " " " May 25, 1990

RECEIVED



DATE

5/15/90

COPIES SENT TO:

KOTS RADIO
SUN CABLE TV
MOUNTAIN BELL- PUBLIC AFFAIRS
BLM-PUBLIC AFFAIRS
all county offices

BOOK 20 PAGE 1886

LEGAL ADVERTISING

CERTIFICATION OF PUBLICATION

STATE OF NEW MEXICO

I, Sammy M. Lopez

COUNTY OF LUNA

do solemnly swear that I am the publisher or associate publisher of the Deming Headlight, newspaper published at Deming, Luna County, New Mexico, and that the article, a copy of which is hereto attached, was

published in said (Headlight) for 2 times consecutively.

First publication being on the 18 day of May, 1990

Second publication being on the 25 day of May, 1990

Third publication being on the day of , 19

Fourth publication being on the day of , 19

Fifth publication being on the day of , 19

Legal Notice

LEGAL NOTICE

The Luna County Board of County Commissioners will hold a Public Hearing on Friday, June 8, 1990, at 10:00 AM in the basement of the Luna County Courthouse, 700 South Silver, Deming, New Mexico, on proposed Ordinance No. 14, being an anti-obscenity ordinance.

Copies of the proposed ordinance are on file and available to the public in the office of the Luna County Clerk, 700 South Silver, Deming, New Mexico.

Meetings and Public Hearings of the Luna County Commissioners are accessible to the handicapped and public participation is encouraged.

LUNA COUNTY BOARD OF COUNTY COMMISSIONERS

Juanita L. Bullington
County Manager
(No. 4894-21, 5-18, 5-25)

#693601
25 lines @ 49¢

DEMING NEWSPAPERS, INC.

By

Patty Cicciotti
B.W. Mgr.

Sworn to and subscribed before me the 18

day of May, 1990

My Commission expires 2-2-94