

Opinion No. 55-6321

November 16, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Kermit Nash, Assistant District Attorney, Fifth Judicial District, Hobbs, New Mexico

We have your letter of October 31, 1955 in which you ask the following questions:

1. Can a city which maintains a municipal airport legally effect zoning regulations covering approach and turning zones adjacent to the airport property?
2. Can a county that maintains an airport legally effect such regulations?

Sections 44-2-1 to 44-2-10, N.M.S.A., provide the statutory authority for the zoning of land adjacent to airports and the methods to be employed to effect such regulations. For the answer to the questions you ask, the controlling statute is 44-2-4, N.M.S.A., and the important part reads as follows:

"Every municipality and county or other political subdivision having within its territorial limits an area within which, according to an airport approach plan adopted by the commission, measures should be taken for the protection of airport approaches, shall adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations applicable to such area, which regulations shall divide the area into zones, and, within such zones, specify the land uses permitted, regulate and restrict the height to which structures and trees may be erected or allowed to grow, and impose such other restrictions and requirements as may be necessary to effectuate the commission's approach plan for the airport."

By the use of the term "**having within its territorial limits an area**" it seems that the Legislature intended to limit the power to zone for airports to the subdivision having the land needing zoning according to the approach plan within its territorial boundaries. It is to be noted that nothing is said about the ownership of the airport itself. This section deals solely with the territorial location of the land which should be zoned under the approach plan, and the power to zone by the political subdivision wherein the land is located. Ownership of the airport has nothing to do with the authority to zone under this provision. It would therefore seem that if the municipally owned airport is so located that none of the approach plan devised by the State Planning Board was located within the territorial limits of such municipality, the municipality would be without authority to zone the land in question. In such case the county commission would be the proper authority to effect the necessary zoning regulations as required by the approach plan devised under Section 44-2-3, N.M.S.A., 1953. If, on the other hand, the land requiring the zoning regulations is within the corporate limits of the municipality, then the municipality should pass the necessary zoning regulations.

As above pointed out, the ownership of the airport is not the important criteria, it is the location of the land which decides which political subdivision enacts the zoning regulations; therefore the county could zone if the land in question was within its territorial jurisdiction.

Trusting we have answered your requests, we remain

By: Paul L. Billhymer

Assistant Attorney General