

Opinion No. 58-195

September 24, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,
Assistant Attorney General

TO: Honorable Albert O. Lebeck, Jr., State Representative, Gallup, New Mexico

QUESTION

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Can the Town of Gallup, New Mexico legally annex a tract of land adjacent to but outside of the city limits without having the same approved by the Planning and Zoning Commission of the said town, in instances when the owner, prior to the creation of the said Planning and Zoning Commission has platted the area, dedicated the streets and filed the same with the city clerk with the approval of the county commission?

CONCLUSION

Yes.

OPINION

ANALYSIS

In accordance with § 14-6-11, N.M.S.A., 1953 Compilation, the City of Gallup annexed a tract of land from a property owner, said property at the time being adjacent to the city limits. Prior to the annexation the property had been platted and the streets dedicated by the owner with the approval of the county commission of McKinley County pursuant to § 15-37-24, N.M.S.A., 1953. The annexation was accomplished after the city by ordinance had established a Planning and Zoning Commission, the provision of the said ordinance being identical to the provision of § 14-2-14 through § 14-2-34, N.M.S.A., 1953.

A dispute has now apparently arisen as to whether the Planning and Zoning Commission must approve the annexation. We are of the opinion that their approval is unnecessary. As we have indicated above the said commission was established by ordinance. The apparent purpose of the commission is to provide for the orderly physical development of the city. In doing so the Planning and Zoning Commission must act reasonably, be guided by factors affecting the welfare of the community, **and** by the **provisions of the statute or ordinance under which it operates**. See 62 C.J.S. Municipal Corporations, p. 200, § 83. Relating the foregoing to the instant problem § 14-2-16, N.M.S.A., 1953 Compilation provides for the creation of a planning commission and the selection of its personnel. The mere creation of a commission does not,

however, execute or invoke many of the provisions of the said Act including the platting and recording of subdivisions or additions until a master plan for the physical development of the municipality has been promulgated in accordance with § 14-2-8, N.M.S.A., 1953. In preparing the master plan the Commission is required to make a careful and comprehensive survey and study of the existing conditions and probable future growth of the municipality and its environs (§ 14-2-19, N.M.S.A., 1953 Compilation). Before adopting the master plan or parts thereof, the Commission is required to hold a public hearing following publication in a newspaper having general circulation in the community. The plan must also be approved by the City Commission as provided by § 14-2-20, N.M.S.A., 1953.

It is only after the adoption of the Master Plan that the filing or recording of plats with the county clerk must receive approval of the Planning and Zoning Commission. Prior to the adoption of a master plan, parties simply are not bound by the provisions of the Planning Commission Act. See **Phillip Mercantile Company v. City of Albuquerque**, 60 N.M. 1, 287 P. 2d 77. In the instant case we understand no master plan has been put into effect. The property at issue has been platted and filed with the county clerk. In view of the foregoing we are of the opinion that approval of the Planning and Zoning Commission of the Plat was unnecessary prior to annexation although our opinion would probably be otherwise if a master plan had been legally adopted pursuant to § 14-2-14 through § 14-2-34, supra.