

Opinion No. 58-245

December 31, 1958

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

TO: Mr. Paul W. Robinson, District Attorney, Second Judicial District, County Court
House, Albuquerque, New Mexico

QUESTION

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Is the City of Albuquerque correct in its interpretation of the statutes that the City of Albuquerque is the sole and exclusive agency under state statutes for considering and approving plats and subdivisions lying outside the city limits and within a perimeter of five miles surrounding the city?

CONCLUSION

No.

OPINION

ANALYSIS

We are informed that when plats for subdivision of land situated in Bernalillo County which are partially in the City of Albuquerque and partially in the county are prepared that the Bernalillo County Commission requires submission of the plat to a County Land Use Committee for review. The City of Albuquerque, pursuant to the provisions of Section 14-2-23, N.M.S.A., 1953 Compilation, takes the position that it is the sole and exclusive agency in considering and approving plats of subdivisions lying outside the city limits within a perimeter of five miles surrounding the city.

Section 14-2-23, *supra*, states in part as follows:

"The planning and platting jurisdiction of such planning commission shall immediately attach, extend to and include all territory within such municipality and within . . . five miles of its corporate limits and not located within any other municipality, and thereafter no map plan, plat or replat of any such territory shall be filed or recorded until it shall have been submitted to and approved by the said planning commission."

From the foregoing portion of Section 14-2-23, we have no difficulty in stating that no map, plat or plan of any territory within five miles of the corporate limits can be filed until it is approved by the city's planning commission. The obvious purpose of such a rule is

to provide for the orderly development of suburban property surrounding the city which in the future might be annexed by the City of Albuquerque. We do not find in the said section, however, an exclusive grant of control over the approval of plats and subdivisions lying within a five mile perimeter from the corporate limits, particularly in view of Section 14-2-13, N.M.S.A., 1953 Compilation, relating to plan and plotting of subdivisions partially within the corporate limits of a city and partly outside of the corporate limits. Section 14-2-13, supra, relates:

"Before any map or plat of any land to be subdivided lying partly within and partly outside the corporate limits of any incorporated city, town or village, is filed or recorded in the county clerk's office of the respective counties, such map or plat shall be approved by the county commissioners, as above set forth, as well as by the municipal authorities as now provided by law."

This office, therefore, believes that dual approval can be exercised by both the City of Albuquerque and the Bernalillo County Commissioners in approving plats or plans lying partially in the city and partially outside of the city up to five miles. A case in point where platting laws similar to Sections 14-2-23 and 14-2-13 were construed together and conferred dual approval is *Norfolk County v. City of Portsmouth*, 186 Va. 1032, 45 S.E. 2d 136.

Failing to find exclusive power directly conferred upon the City of Albuquerque in Section 14-2-23 thus repealing Section 14-2-13, we conclude that the county commission as well as municipal authorities must approve maps and plats of land to be subdivided which lie partially in and partially outside the corporate limits of the City of Albuquerque.