

## Opinion No. 60-211

November 16, 1960

**BY:** OPINION of HILTON A. DICKSON, JR., Attorney General

**TO:** Mr. Donn E. Hopkins State Planning Officer State Planning Office State Capitol  
Santa Fe, New Mexico

### QUESTION

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1. Does the State Planning Office have the powers of the old State Planning Board, or does it have only those powers specifically enumerated in the statutes creating the State Planning Office?
2. Does the State Planning Office have the power to formulate airport approach plans on which municipal airport zoning ordinances will be based?

#### CONCLUSIONS

1. Only the powers conferred by statute.
2. No.

### OPINION

#### {\*627} ANALYSIS

The State Planning Board was created by Chapter 158, Laws of 1939, compiled as §§ 3-601 to 3-607, N.M.S.A., 1941 Compilation. Section 3-604 describes the powers and duties of the Board as follows:

"It shall be the duty of the state planning board to make inquiries, investigations and surveys concerning the natural economic and human resources of the state, to study, develop, formulate and propose plans for the material, economic and social development of the state and to cooperate in the carrying on of such work with any or all agencies of the federal {\*628} government, with any or all departments of the state government, and any county, city, state, district or other agency, whether public or private, interested in the development of the resources of the state and the welfare and prosperity of its citizens; to make regular reports of the results of its investigations and to recommend to the governor, from time to time, such measures as may be necessary or advisable to put into effect plans or programs for the conservation of the resources of the state for their proper development and utilization, and for the welfare of its citizens. At the discretion and upon the direction of the executive, the board shall participate in

interstate and regional planning efforts for the purpose of carrying out any phases of its duties; in order to promote public interest and understanding in the problems of state planning, the board may publish and distribute copies of reports of its activities and employ such other means of lawful publicity and education as it may deem proper and advisable."

Chapter 69, Laws of 1949, compiled as §§ 4-6-1 to 4-7-8, N.M.S.A., 1953 Compilation, created the Economic Development Commission, abolished the State Planning Board, and transferred the Board's records and assets to the Development Commission. There was no express authority given to the Economic Development Commission to exercise the powers of the State Planning Board. Instead, the Development Commission's duties and functions were elaborately and specifically stated in § 4-7-6. These duties and functions are quite similar to the powers and duties exercised by the State Planning Board, and, if anything, are broader in scope. But be that as it may, the Economic Development Commission was itself abolished by Chapter 58, Laws of 1959.

Chapter 58, Laws of 1959, compiled at §§ 4-17-1 to 4-17-9, N.M.S.A., 1953 Compilation, also created the Department of Development, and the appropriations, equipment, supplies, records, money and contracts of the Economic Development Commission were transferred to the Department of Development. The purposes of the Department of Development are stated in Section 4-17-1, as follows:

"The 'department of development' is created. The department shall foster and promote the economic welfare of the state by:

- A. Collecting, assembling and disseminating, both in and outside the state, information relating to the economic opportunities and possibilities of the state, and of particular sections thereof;
- B. Encouraging cooperation among industries in the state and between the industries in the state and the people of the state;
- C. Encouraging the purchase of goods made in New Mexico;
- D. Encouraging the location of new industrial enterprises in New Mexico, and the expansion of industrial enterprises presently located in the state;
- E. Promoting and encouraging the use of gasoline by vehicles on the highways of the state to increase gasoline tax collections; and
- F. Conducting publishing activities."

In this statement of purposes, there is no emphasis on the phase of planning; the whole emphasis being on the collection and dissemination of information about the Economic possibilities of the State, to encourage economic growth. No mention is made of planning for the social development of the State, of cooperation { \*629 } with local and

federal agencies in planning, of the development of natural resources, of conservation of natural resources, or of participating in interstate or regional planning efforts. All these powers and duties were, however, possessed by the State Planning Board. It is safe to say, therefore, that even if the powers of the State Planning Board could be traced through the Economic Development Commission to the Department of Development, at least the planning powers of the State Planning Board did not descend to the Department of Development.

It was, perhaps, this gap in State planning functions that led to the creation of the State Planning Office. The State Planning Office was also created in 1959, by Laws of 1959, Chapter 255. This chapter is the "State Planning Act", and is compiled as Sections 4-20-1 to 4-20-7, N.M.S.A., 1953 Compilation (P.S.). The powers and duties of the State Planning Office are stated in § 4-20-3:

"The State Planning Office shall:

- A. Through directions to existing agencies provide for comprehensive studies of water resources of the state, including the preparation and revision of complete inventory listings including a library and bibliography of all water resource studies and shall work toward the preparation of a comprehensive statewide water resource development plan relating water resource development potential and needs to population, industry, agricultural and recreational growth and development, and indicating benefits to be derived from such water development, including but not limited to irrigation, flood control, domestic, and industrial water requirements and recreation;
- B. Study all capital projects proposed by the state departments and agencies and render advice thereon;
- C. Study the organization of state government and make recommendations for reorganization;
- D. Cooperate with and provide planning assistance and advice, including but not limited to surveys, land use studies, urban renewal plans, technical services and other planning work to county, municipal and other local governments, instrumentalities or planning agencies;
- E. Contract for, receive, and utilize any grants or other financial assistance made available by the federal government or from any other source, public or private;
- F. Submit recommended legislation to the legislature or any of its committees in connection with studies relevant to state planning and development, and cooperate with and furnish information to legislative committees, including the legislative finance committee, to avoid duplication of efforts; and
- G. Submit reports and render advice to the governor."

This list of duties includes nearly all the former planning duties of the State Planning Board, it is true. But there is a difference in saying that the duties of the State Planning Office cover the duties of the State Planning Board, and saying that the State Planning Office is authorized to exercise the powers of the State Planning Board. There is no express transfer of powers and duties to the State Planning Office from the State Planning Board or any other agency. There are significant differences in their powers, such as the new emphasis on the study of water resources, the duty of the State Planning Office to study reorganization of the State government, and the express power to {\*630} receive grants of financial aid from various sources. Moreover, no agency of the State government was abolished by the chapter creating the State Planning Office; and there is no express indication that the State Planning Office was created to replace, and to exercise the powers of, the State Planning Board or any other agency. Ten years separate the abolishment of the State Planning Board and the creation of the State Planning Office. While we saw that the Economic Development Commission was intended to replace the State Planning Board, and the Department of Development was intended to replace the Economic Development Commission, we find that the State Planning Office is not a part of the Department of Development, as we might expect if it were intended to exercise the functions of the State Planning Board, but the State Planning Office is a part of the Department of Finance and Administration, which has no connection with the State Planning Board, or any of the agencies created to replace the Board.

We think that, had the legislature intended that the State Planning Office replace the State Planning Board and exercise the powers of the State Planning Board, it would have expressly provided for that result. Instead, two other agencies of the State government were successively created to exercise all or a part of the powers of the State Planning Board, and then, ten years later, a separate State Planning Office was created. The State Planning Office's powers and functions were specifically delimited, and that office was charged with duties heretofore unmentioned. In the light of this legislative history, we are of the opinion that the State Planning Office was not created to exercise the powers of the State Planning Board, but was intended to exercise only the specific powers granted to it by Chapter 255, Laws of 1959.

Now we turn to your second question. You refer us to § 44-2-1, et seq., N.M.S.A., 1953 Compilation, relating to airport zoning. Section 44-2-3 empowers the "commission" (defined as the State Planning **Board**) to formulate and adopt airport approach plans for every publicly owned airport in the State. When such a plan is adopted, municipalities having territory within the area of the plan must adopt zoning ordinances in conformity with the plan. The State Planning Board no longer exists. Your question is whether the State Planning Office now has power to adopt airport approach plans.

Section 44-2-3 is unamended, and continues to vest the power to adopt airport approach plans solely in the State Planning Board. We have already indicated our opinion that the State Planning Office does not exercise the powers granted to the State Planning Board. We think the instant situation even clearer, for the power to adopt airport approach plans is not granted by the statutes defining the powers of the State

Planning Board, but by separate statutes relating to airport zoning. These statutes evince a plan to have a central agency deal with the problems of airport approaches and zoning for the entire State. The plan is still there, but the central agency is not. We find nothing to indicate that the power to formulate and adopt airport approach plans is now vested in the State Planning Office, and we are of opinion that the State Planning Office has no such power.

By: Norman S. Thayer

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