

## **Opinion No. 64-112**

August 28, 1964

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Wayne C. Wolf, Assistant Attorney General

**TO:** Dan Sosa, District Attorney, Third Judicial District, Dona Ana County Court House, Las Cruces, New Mexico

### **QUESTION**

#### QUESTIONS

1. Must an individual subdividing property outside the five mile jurisdictional area of a city planning commission, file a subdivision plat if he divides such property into more than 3 but less than 25 parcels?
2. Does an individual subdividing property within a city have to file a plat of the subdivision in the county clerk's office if he divides such property into more than 3 but less than 25 parcels?
3. Are the provisions of Section 14-1-1 through 14-2-34, N.M.S.A., 1953 Compilation and 70-3-1 through 70-3-9, N.M.S.A., 1953 Compilation (P.S.) mandatory?

#### CONCLUSIONS

1. No.
2. Yes, but see analysis.
3. See analysis.

### **OPINION**

#### ANALYSIS

The answer to your first question is somewhat dependent upon the answer to your third question in that both involve the mandatory application of Sections 14-1-1 through 14-2-34, N.M.S.A., 1953 Compilation. Looking only at the strict mandate of the statute we are compelled to say that the answer to your first question is "no." First of all, by qualification in your question, the property is taken out of the jurisdiction of a municipal planning commission. The property would be strictly under the jurisdiction of the county and not the city. Section 14-2-9, N.M.S.A., 1953 Compilation requires county commission approval of such a subdivision before a plat of the area may be filed. There is, however, no express statutory requirement that a plat must be filed; the only

restriction concerns approval for plats that are filed. We could say that the requirement is implied, but a reference to other statutory sections convinces us that the legislative intent is against such an implied requirement. The Land Subdivision Act, Sections 70-3-1 through 70-3-9, N.M.S.A., 1953 Compilation (P.S.) requires the filing of a plat before subdivided land may be sold. This Act, however, expressly exempts subdivisions of less than 25 parcels from any requirement contained in its provisions including the platting and filing requirement. The absence of any mandatory filing requirements in Section 14-2-9, et seq., N.M.S.A., 1953 Compilation, coupled with the specific provisions of the Land Subdivision Act, forces us to conclude that an individual subdividing property outside the jurisdiction of a municipal planning commission does not have to file a plat if he divides the property into more than 3 but less than 25 parcels.

Your second question concerns subdivided property that is located within the jurisdiction of a municipal planning commission. You have asked if the subdivider has to file a plat of his subdivision with the county clerk. Section 14-2-24, N.M.S.A., 1953 Compilation, seems to provide a specific answer to your question. That section provides that a subdivision located in the platting jurisdiction of a municipality must be the subject of a plat to be filed with the county clerk of the county in which the land lies. The filing requirement, however, is optional in that the subdivider may pay the filing fee to the municipal planning commission and the commission may file the plat with the county clerk. This section, however, does specifically require the filing of the plat with the county clerk whether the filing be accomplished by the commission or the subdivider.

Of necessity in discussing your first two questions we have indicated our answer to your third question. To reiterate, we state our opinion that the provisions of Sections 14-1-1 through 14-2-34 are mandatory as respects the facts shown in your second question but are not mandatory for the facts shown in your first question. In all instances county commission approval or municipal planning commission approval is necessary for any attempted filing.