

Opinion No. 67-139

November 20, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: James B. Stapp City Attorney P.O. Box 1838 Roswell, New Mexico

QUESTION

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Are the enabling provisions of the Municipal Airport Law (14-40-4, N.M.S.A., 1953) sufficiently broad to permit the lawful creation by ordinance of an autonomous airport authority or separate entity empowered to manage, control, operate and maintain a publicly owned airport facility independent of the municipal governing body?

CONCLUSION

No.

OPINION

{*224} ANALYSIS

Section 14-40-1, N.M.S.A., 1953 Compilation is a grant of authority by the legislature to municipalities to "acquire and operate municipal airport facilities for the convenience of residents and to promote the economy of the area by making air transportation available." In furtherance of such purpose, Section 14-40-4 provides that:

"the governing body of any municipality may: . . . (F) enact any ordinance, rule or regulation not inconsistent with state or federal law or regulation which provides for . . . the orderly and efficient management or operation of the airport or any airport facility. . . ."

You ask whether the above statute would enable the Roswell City Council to enact an ordinance creating an autonomous and independent airport authority. We assume that you contemplate an ordinance which constitutes a total delegation by the city to the new authority of the right to operate the airport, although revenues therefor might come from the city, as well as airlines using the airport facilities.

All the authority of the municipality to enact ordinances in connection with the creation and operation of an airport must be expressly delegated to it by the state legislature. **Purcell v. City of Carlsbad**, 126 F.2d 748 (C.A. 10, 1926). The principle set out in **McQuillin** "Municipal Corporations", Vol. 5, Section 16.08 would apply in construing this statute:

"The Power of a municipal corporation to enact ordinances is itself, as are other powers of the corporation, a delegated power. It is a general power to enact an ordinance to carry out any specific power or powers delegated to it, but it is not a general power in the sense of being unrestricted. Nor is it an independent source of power; it is merely a power to carry out other powers delegated or committed to the municipality."

By interpreting this statute as a grant of authority to create an autonomous airport authority, you would be implying a totally independent power to create a new statutory entity and a power to sub-delegate the authority granted to the city to such new authority. In other states it has been the usual practice for the state legislatures to either directly create an airport authority or to expressly grant the authority to create such an entity either to the county, the city or some other quasi municipal corporation such as a port authority. **McQuillin**, supra, Section 11.03.

The general rule of construction applicable is that the power to {²²⁵} enact ordinances will be liberally construed where it is exercised for the purpose of carrying out all things and objects incidentally necessary to the carrying out of the specifically conferred powers; however, where the statute specifically authorizes and directs the manner in which the city will exercise the power, this method is presumed to be exclusive. **McQuillin**, supra, 16.09. An example of the application of this rule in New Mexico is the case of **City of Clovis v. Crain**, 68 N.M. 10, 357 P.2d 667 (1960) wherein the legislature had expressly provided a method for imposing assessments for garbage collection. It was held that the specific method authorized precluded the city from enacting an ordinance authorizing other methods of collecting for this public service.

Quite obviously the City of Roswell is capable of operating an airport without the necessity of creating an autonomous airport authority. Therefore, the enactment of an ordinance purporting to create such authority is not necessary to enable the city to exercise the general powers granted to it under the Municipal Airport Act.

Aside from the construction of the statute, we think that the creation of an autonomous authority to operate an airport would be an unlawful delegation of the power granted to the city council. In 37 Am. Jur., Vol 37, p. 732, Section 118 it is said that:

"The same restrictions which rest upon the state legislature as to a delegation of legislative powers and functions conferred upon it by the constitution are held to rest upon a municipal corporation as to powers granted to it by the legislature. It follows that a municipal corporation cannot delegate to private individuals or corporations any of the governmental, legislative or discretionary functions confided to it by the legislature."

In **Adams v. City of Albuquerque**, 62 N.M. 208, 307 P.2d 792 (1957) it was held that the city could not by ordinance delegate to the state labor commissioner the responsibility of fixing the wages of the city employees because the city council had no voice in the appointment of such state officer and no control over him. In that case the court said:

"The responsibility for conduct of affairs of a municipality is placed upon its officers and employees except for provided supervision by the state. We find no authority that municipal officers may delegate their authority to a state official in whose appointment they have no voice and over whom they have no control."

In view of the foregoing, we are of the opinion that a city cannot by ordinance create an independent autonomous airport authority which can exercise the rights granted to municipalities under the Municipal Airport Act.

By: Robert L. Woodward

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