

Opinion No. 47-5007

April 8, 1947

BY: C. C. McCULLOH, Attorney General

TO: C. R. Sebastian State Comptroller Santa Fe, New Mexico

{*28} We are in receipt of your letter of April 1, 1947, and the enclosed letter from George Harris, City Attorney of Hobbs, in which he states that some time ago the City of Hobbs conveyed to the County of Lea its municipal airport, that the county has taken over the property and has on hand a certain amount of cash budgeted for improvements on the airport, and that a question has been raised by the Civil Aeronautics Authority, who will share in the cost of the contemplated improvements, as to whether a county has legal authority to own, operate, maintain and improve a public airport or to expend funds in connection therewith. You ask our opinion as to whether a county has such power.

By Section 15-3401, counties are given, among others, the following powers:

"2. To purchase and hold real estate and personal property for the use of the county.

"3. To sell and convey any real or personal estate owned by the county and make such order respecting the same as may be deemed conducive to the interests of the inhabitants.

"4. To make all contracts and do all other acts in reference to the property and concerns necessary to the exercise of its corporate or administrative powers."

Section 14-3402 is as follows:

"Any real or personal property heretofore or which may hereafter be transferred to any {*29} county shall be deemed the property of such county."

Section 15-3501 is as follows:

"The powers of a county as a body politic and corporate shall be exercised by a board of county commissioners."

Section 15-3512 is as follows:

"The board of county commissioners shall have power at any session to make such orders concerning the property belonging to the county as they may deem expedient."

Section 15-3514 is as follows:

"To represent the county and have the care of the county property and the management of the interest of the county in all cases where no other provision is made by law."

All of the sections hereinabove quoted are part of Chapter 1 of the laws of 1876. At the time of enactment of these sections there was no general law providing for the incorporation of municipalities and only three municipalities in the entire state had been incorporated under special acts. At the time of the adoption of these sections all powers usually exercised by municipalities had to be exercised by the board of county commissioners or not at all. In view of this situation and these sections the Supreme Court in the case of *Agua Pura Co. v. Mayor*, 10 N.M. 6, after citing the above section said:

"These clauses seem to mean something more than the ordinary powers appertaining to counties. They confer express authority to do the acts in the interest of the county, and to make contracts in reference to the concerns necessary to the exercise of this authority, when not otherwise provided by law. We do not understand that the grant of powers to counties or other municipal corporations must contain a specification of each particular set to be done, but it is sufficient if the words used be sufficiently comprehensive to include the proposed acts. An express authority may be general as well as particular. It is clear that the powers of the counties, by the foregoing act, are recognized as being not only "corporate" but "administrative."

"We think it beyond question that the providing of an adequate supply of water for municipal and domestic purposes, in one of the communities of the county, was a matter pertaining to the interest of the county, and was a legitimate county purpose. If, as held by the Supreme Court of the United States in *Folsom v. Ninety-six*, 159 U.S. 628, the building of railroads was a county purpose, a fortiori must an enterprise for supplying its towns and inhabitants with water be a county purpose, especially when the county in its administrative capacity, is the only municipal authority having control of the territory concerned in the matter."

In view of the foregoing it is my opinion that a board of county commissioners may lawfully own, operate, maintain and improve a public airport and may expend funds in connection therewith.

This opinion should not, however, be construed as holding that counties are authorized to become indebted by the issuance of bonds or otherwise for such purposes.

By ROBERT W. WARD,

Asst. Atty General