

Opinion No. 53-5847

November 19, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Fred R. Sweet, Comptroller New Mexico Institute of Mining & Technology Campus Station Socorro, New Mexico

{*266} In your letter dated November 9, 1953, you inquire whether new construction on campuses of State institutions, located within a municipality, are subject to local building codes and whether it is necessary to secure a building permit from the municipality for such construction.

In the absence of a statute specifically authorizing municipalities to regulate construction of buildings of the State, or State institutions, located within the municipalities, such power does not exist in the municipality. The general rule concerning this matter is stated in 9 Am. Jur., Building, § 6, at p. 202, as follows:

"However, the legislative grant of police powers to a municipal corporation will not be deemed a cession of the Legislature's prerogative to govern for itself the institutions of the State which may be located within such municipality, unless it may be correctly garnered from the later act that such was the legislative intent."

Although there is some conflict of authorities concerning the power of municipalities to enforce building regulations against property belonging to counties and school districts located within the municipality, the authorities seem to be uniform in support of the foregoing general statement. In this connection, see *Milwaukee vs. McGregor*, 140 Wis. 351, 21 NW 642; *Kentucky Institute vs. Louisville*, 123 Ky. 767, 97 SW 402, 8 LRA (NS) 553; *Charleston v. Southwestern Construction Company* (W. Va.) 64 SE 2d 676. See also 31 A.L.R. 450.

I fail to find any language showing a delegation of power to municipalities to regulate construction of State buildings located within municipalities under the building and zoning regulations contained in §§ 14-2501 -- 14-2518, inclusive, of the 1941 Compilation. § 14-2517, providing for enforcement of the municipal regulations, declares a violation of the Act to be a misdemeanor punishable by fine or imprisonment, or both, and it would seem clear that the Act was not intended to authorize municipalities to regulate buildings or the construction thereof by State institutions regardless of the fact that such buildings are located within the municipal limits.

For the above reasons, it is our opinion that a State institution is not required to obtain a building permit from the local municipality nor is it subject to the building regulations of the municipality in which the State building may be located.

By: C. C. McCulloh

Assist. Attorney General