Opinion No. 62-124

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BY: OPINION OF EARL E. HARTLEY, Attorney General George Richard Schmitt, Assistant Attorney General

TO: Joe L. Valdez, Director, Department of Courtesy and Information, Santa Fe, New Mexico

QUESTION

FACTS

The Village of San Jon is an incorporated municipality having a population of 2,500. The San Jon Registration Station is state-owned property under the control of the Department of Courtesy and Information and is contiguous to the Village of San Jon. The Department and the Village would like the Registration Station annexed to the Village of San Jon.

QUESTIONS

1. Can a municipal corporation annex a State Registration Station?

2. Does the Department of Courtesy and Information have the authority to approve the annexation?

CONCLUSION

1. Yes, but see Analysis.

2. Yes.

OPINION

ANALYSIS

1. Annexation of territory is governed by Sections 14-6-1 to 14-6-19 (inclusive) of the New Mexico Statutes Annotated, 1953 Compilation. Section 14-6-1 establishes a procedure under which a "municipal corporation" may annex any contiguous territory thereto . . ." Since the contemplated annexation of the Registration Station would be pursuant to the procedures listed under the annexation statutes supra, the answer to the question would depend on whether state-owned property is included within the terms of the laws cited above.

The cases found on this point answer the question in the affirmative (see 62 C.J.S. Municipal Cor porations, p. 133). However, a majority of the decisions expressly point out that a city after annexing state property cannot exercise any control over the property that would interfere with the state authority. See McQuillin on Municipal Corporations, 3d Ed. Vol. 2 § 7.18, p. 307.

As far back as the year 1913, the Oregon Court in **Day v. City of Salem,** 65 Ore. 114, 131 Pac. 1028-30, held that a municipal corporation was to an extent an arm of the state. It could include within its territorial limits state property, such as a state institution for the insane, so long as the municipal ordinance did not encroach upon the sovereign powers of the state; the laws allowing the extension of the limits of a municipality being general ones.

The Texas Court in **State v. Texas City,** 295 S.W.2d 697 703 (1956) in construing an annexation statute similar to the New Mexico law stated that:

". . . any government-owned territory -- state or federal -- is within the meaning of the statutory phrase 'additional territory lying adjacent' to cities. . . ."

and held that state-owned navigable submerged territory could be validly annexed by a city. See also **Tovey v. City of Charleston,** 237 S.C. 475, 117 S.E.2d 872, 875 (1961) where it was held that state-owned marshlands could be annexed to and made a part of a city under the state laws.

New Mexico cases under the state annexation laws include **Cox v. City of Albuquerque,** 53 N.M. 334-340, 207 P.2d 1017 (1949) where the Supreme Court liberally interpreted a portion of the statutes, construing them "in a most beneficial way . . . to favor public convenience. . . ." Though our Court has never been called upon to decide whether state-owned land can be annexed to and made a part of a municipality, a somewhat analogous question was presented to the Court in the case of **Your Food Stores, Inc. v. Village of Espanola,** 68 N.M. 327, 335, 361 P.2d 950 (1961). In the above cited case, the Court held that Indian lands could not be annexed to a municipality because the state had no power to legislate for the pueblo nor to make its people subject to state laws, and, since the state could not impose its laws on the pueblo, it was equally clear that it could not confer upon the Village of Espanola powers which the state itself did not possess.

Although the basis of this decision apparently rested upon a lack of state jurisdiction which is not present in the question before us, certain references to this question were noted by the Court, as set out below:

"It must, likewise, be conceded that two self-governing bodies cannot have dual and coexistent jurisdiction and control within the same territory at the same time. In re Sandia Conservancy District, 57 N.M. 413, 259 P.2d 577. **They are not here exercising functions for different purposes within the same boundary."** (Emphasis supplied)

The above quoted words of the Court should be taken into consideration in this instance, since both the State Registration Station and the Village of San Jon are self-governing bodies. And in accord with our interpretation of the above quoted section, such bodies cannot consolidate through annexation because of the problem of dual jurisdiction unless both the Village and the Station are set up to exercise different functions for different purposes within the same boundary.

Under the above condition the annexation may be permitted under the state law, providing that the Village exercise no control or enforces any laws over State property which would interfere with the State authority or encroach upon the sovereign rights or powers of the State.

Question 2. Under the annexation statutes, Sections 14-6-1 to 14-6-19 supra, approval of the land-owner is required before his contiguous territory can be annexed. In this case, since the Registration Station is owned by the State, the approval must come from the State through its designated officers or departments entrusted with the control and care of the property. The State Registration Station is under the control of the Department of Courtesy and Information under Section 64-40-7, N.M.S.A., 1953 Compilation and has been transferred to the board of supervisors of the Department by Section 64 - 30 - 60, N.M.S.A., 1953 Compilation. Therefore, the approval should come from the board of supervisors of the Department, which includes the governor and two other members. The approval of the state board of finance under Section 6-1-8, N.M.S.A., 1953 Compilation is not required because the contemplated annexation is not a "sale" or "disposal" of the property.