

Opinion No. 65-189

September 27, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General James V. Noble, Assistant Attorney General

TO: Mr. Jay Morgan, City Attorney, Portales, New Mexico

QUESTION

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1. May a municipality regulate traffic on parking lots physically situated within municipal limits but owned and controlled by a state institution of higher education?
2. May a municipality regulate traffic on parking lots physically situated within municipal limits but owned and controlled by a local school district?

CONCLUSIONS

1. No.
2. No.

OPINION

{*307} ANALYSIS

Eastern New Mexico University owns land situated within the municipal limits of Portales. It is a state institution of higher learning and the use of such land is devoted to use by its students for parking. The question has arisen as to what control, if any, may be exercised by Portales over the traffic on these parking lots.

In Opinion No. 5024-47-52 Report of the Attorney General, 1947-48 appearing at page 47 it was held that, since the county commission had dedicated an area adjoining the county courthouse square to the city of Portales, the city could regulate traffic in such area by placing parking meters thereon. By {*308} necessary implication, the opinion held that absent such a dedication the city would have had no such authority.

Opinion No. 5847-53-225, Report of the Attorney General 1952-53 appearing at page 266 is to the same effect in holding that a state educational institution is not required to obtain a municipal building permit.

Opinion No. 62-28 Report of the Attorney General 1961-62 appearing at page 329 also dealt with the degree of control that could be exercised by the regents of such an

institution over its property, including campus streets. It held that such control extended so far as to allow the regents to prohibit, within reason, certain vendors from using the streets.

It follows from these opinions and the authorities cited therein that the Board of Regents of Eastern New Mexico University has the authority to regulate traffic on its own parking lots and that the city would not have authority to regulate such traffic without an agreement by the Board of Regents.

Your second question involves the same situation except that the parking lot owner is a local school board.

Section 73-10-2 N.M.S.A., 1953 Compilation (P.S.) grants the same power over schools and districts under its jurisdiction as is possessed by county boards of education over their respective schools and districts. Under the provisions of Section 73-9-1 N.M.S.A., 1953 Compilation, a county board of education has power to ". . . contract and acquire and dispose of school property pursuant to law . . ." Under the provisions of Section 73-9-7 N.M.S.A., 1953 Compilation, a county board of education ". . . shall have **supervision and control** of all rural schools and districts, **and of sites**, buildings, equipment and funds of said districts . . ." (Emphasis added.)

A school district is recognized throughout our constitution and statutes as constituting a political subdivision of the state separate and apart from other such political subdivisions.

In view of such status, and following the reasoning set forth in Opinion 5847-53-225, supra, a municipality may not, in the absence of agreement, control traffic on parking lots owned by a local school district which are situated within the exterior boundaries of the municipality.