

## Opinion No. 65-70

April 28, 1965

**BY:** OPINION OF BOSTON E. WITT, Attorney General Wayne C. Wolf, Assistant Attorney General

**TO:** Bob White Director, State Aviation Department, State Corporation Commission Building, Santa Fe, New Mexico

### QUESTION

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1. Does the State Aviation Department have the power to acquire and own airport facilities?
2. Does the State Aviation Department have the power to contract with the Federal Government for airport aid?

#### CONCLUSIONS

1. See analysis.
2. Yes, but see analysis:

### OPINION

#### {\*119} ANALYSIS

You have asked whether or not the Department of Aviation may hold title to real property used in the operations of a public use airport. Section 44-1-10.5, New Mexico Statutes Annotated, 1953 Compilation lists the powers and duties of the Aviation Board which has overall supervision of the Aviation Department. In pertinent portion that section provides:

"44-1-10.5. -- Aviation Board -- Powers and Duties. --

The board shall: . . .

C. Authorize expenditures of money from the state aviation fund for construction, development and maintenance of public-use airport facilities, except airports serving regularly scheduled inter-state airlines, including rural landing fields and airstrips. Expenditures shall be made according to the need for airport facilities as determined by the board; . . ."

From this section we see that the board shall expend money for the construction of airport facilities. In our opinion this section necessarily implies that the Department of Aviation may hold title by and through the State of New Mexico to those facilities whose acquisition with state funds is authorized. Although the statute is silent with respect to the ability of the Aviation Department to hold title to real property, it is implicit that the Board has the implied authority necessary to fulfill the duties for which it was created.

We also note that Section 8 of Chapter 2, Laws of 1964, 2nd Special Session (General Appropriation Act), specifically authorizes the Aviation Board to expend money for the construction of airports.

{\*120} At 81 **C.J.S.**, "States", Section 58, at page 977-8, it is stated:

"Generally speaking, state officers, **boards**, commissions and departments have such powers as may have been delegated to them by express constitutional and statutory provisions **or as may properly be implied from the nature of the particular duties imposed on them . . .**" (Emphasis added).

It is our opinion that in the present situation the power to hold title to real property does not exist for the Aviation Department. However, since the Aviation Department may expend monies for the encouragement of aviation by the construction of airport facilities, we are of the opinion that the ownership of these facilities must rest in the sovereign state as a necessary implication from the authorization to spend money. See Attorney General's Opinion No. 62-87.

We note that it is also stated in 81 C.J.S., "States" Section 104 at page 1077:

"However, a conveyance of land to a state officer as such and his successors in office is not sufficient to vest title in the state in the absence of evidence that the land was bought for the state . . ."

From the foregoing quotation it is obvious that an instrument of conveyance should expressly indicate that sovereign state is the actual party in interest and that the state official is merely acting on behalf of the state. We note also that in construing the statutes relating to the powers of the state or its agencies the welfare of the state and the purpose for which the powers were granted must be given primary consideration. We must therefore keep in mind the stated purposes of the aviation act and the powers of the Board. Primarily the Board is to cooperate with other agencies to encourage and advance aviation in the state. The theme of the entire aviation act contemplates that the Aviation Department is a cooperative agency working with both state and federal agencies to advance aviation. While we are of the opinion that the Aviation Department may spend money for airport property with the resulting title to run to the state we conclude that the aviation department through the state, may not continue indefinitely to own and operate an airport. The department may be the only state agency involved in the development of an airport for a reasonable period of time but eventually the operations of the airport must be assumed by another agency, political subdivision or

local government body of this state. It is therefore our conclusion that in its actions in promoting aviation in the State of New Mexico, the Aviation Department is acting as an agent of the State and title to property acquired by the expenditure of Aviation Department funds must run to the State of New Mexico.

Your second question asks whether the State Aviation Department may contract with the Federal Government for airport aid. We note that Section 44-1-10.5, New Mexico Statutes Annotated, 1953 Compilation provides that the State Aviation Department shall cooperate with all Federal agencies to encourage and advance aviation in this state. In our opinion the power to contract with the Federal government is necessarily implied from the statutory duty that the Aviation Department must cooperate with Federal agencies to encourage and advance aviation in New Mexico. In opinion No. 62-87 we said that the State Board of Medical Examiners had power to contract for appropriate office accommodations. That opinion applies to the question you have asked. We point out that Opinion No. 62-87 said that such a contract cannot bind future legislatures. That same caution applies in this instance. The state or any of its agencies may not contract to spend money which {<sup>\*121</sup>} has not been appropriated. See Attorney General's Opinion No. 64-74.

We conclude that the Aviation Department may contract with the Federal government for airport aid for the purpose set out in Section 44-1-10.5 (C). Such a contract should be executed by the State of New Mexico and the State Aviation Department. The contract may not obligate funds which have not been appropriated.