

Opinion No. 69-48

May 20, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: Alexander F. Sceresse, District Attorney, County Courthouse, Albuquerque, New Mexico

QUESTIONS

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Do City of Albuquerque ordinances dealing with crimes apply to the University of New Mexico buildings, grounds and streets, and give the City of Albuquerque Municipal Court jurisdiction for trying such criminal matters?

CONCLUSION

Under our Constitution the state has exclusive control over property occupied by state educational institutions. Article XII, Section 3, New Mexico Constitution. The legislature is given authority to provide for control and management of these institutions by a board of regents. Article XII, Section 13, New Mexico Constitution. It has done so with specific reference to the University of New Mexico. Section 73-25-1, et seq., N.M.S.A., 1953 Compilation. Under Section 73-25-7, supra, the board of regents of the University of New Mexico "shall have power and it shall be their duty to enact laws, rules and regulations for the government of the University."

OPINION

{*71} In accordance with Sections 39-5-1 and 39-5-2, N.M.S.A., 1953 Compilation (Interim Supplement), the board of regents of the {*72} University of New Mexico is specifically given traffic control jurisdiction on its property and may employ and assign duties of campus security officers for the institution. On the campus these officers "may enforce all applicable laws, ordinances and campus traffic regulations."

In 1925 the City of Albuquerque annexed the area which contains the University of New Mexico. Therefore, this campus is within the geographical jurisdiction of the City of Albuquerque, and the Albuquerque Police Department has some jurisdiction on this campus. However, with certain exceptions, the jurisdiction is limited to the enforcement of state laws on the campus. **Board of Regents of Universities and State College v. City of Tempe**, 356 P.2d 399, 88 Ariz. 299. See also first portion of Section 14-12-2 (d), N.M.S.A., 1953 Compilation.

In 62 C.J.S. **Munic. Corp.** 157 the general rule is stated as follows:

"Generally speaking, the state is not subject to legislative enactments of a municipal corporation, and the property of the state and its agencies is free from municipal power to regulate.

Property of the state is exempt from municipal regulation in the absence of waiver on the part of the state of its right to regulate its own property; and such waiver will not be presumed. The municipality cannot regulate or control any property which the state has authorized another body or power to control."

In 1969, the New Mexico Legislature provided such a waiver by enacting Chapter 131, Laws of 1969. This new law, effective March 31, 1969 provides for such a waiver under agreement between boards of regents of state educational institutions and municipalities for traffic offenses occurring on the university campus. To this extent, it supplements Sections 39-5-1 and 39-5-2, supra. It also supports a legislative intent that the board of regents retain control of the campus unless otherwise provided by law.

As the law is presently written, I must conclude that ordinances of the City of Albuquerque dealing with crimes do not apply to land under the control of the Board of Regents of the University of New Mexico. An exception dealing with traffic offenses only is provided for in Chapter 131, Laws of 1969, discussed above.