

Opinion No. 71-115

October 18, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Mr. Bob White Director Department of Aviation P.O. Box 579 Santa Fe, N.M. 87501

QUESTIONS

FACTS

The Albuquerque City Commission and the Bernalillo County Commissioners have entered into an agreement to finance a study of the feasibility of an airport on the mesa, West of Albuquerque. The two Commissions have jointly requested a grant of \$ 5,000.00 from the State of New Mexico's Department of Aviation to help finance this planning and feasibility study.

QUESTIONS

Would Section 44-1-10.8, N.M.S.A., 1953 Comp. (Repl. Vol. 7) prohibit landing fees for aircraft if this grant is made and an airport facility results even though no part of the grant is used for the construction, development or operation of the facility?

CONCLUSION

No.

OPINION

{*173} ANALYSIS

Section 44-1-10.8, N.M.S.A., 1953 Comp. (Repl. Vol. 7) states:

"No airport facility which received funds under the Aviation Act [44-1-10.1 to 44-1-10.9] shall charge landing fees for aircraft."

It is first noted that the restriction announced in this section is directed at an "airport facility," while the question posed to this office is whether a grant can be made to a joint municipal-county committee which will study the feasibility of, or planning for, an airport facility, looking at the restrictions in this light, it seems apparent that the restriction pre-supposes an existing airport facility rather than one which is in only the feasibility or planning stage. We are of the further opinion the Section 44-1-10.5(A), N.M.S.A., 1953 Comp. (Repl. Vol. 7) and its mandate that "the board **shall** cooperate with all public and private agencies and organizations, state, local and federal, to encourage and advance aviation in the state;" and sub-section I of this same section, which was added by

Chapter 49, Laws of 1970, granting the board the power "to engage in **planning** for the development of a system of public airports within the state" makes it apparent that the Board has the necessary power to make the grant to the joint municipal-county organization for the purposes herein-above stated without the airport, should it be built sometime in the future being subject to the restriction stated in Section 44-1-10.8, **supra**.

By: James B. Mulcock, Jr.

Assistant Attorney General