

Opinion No. 71-76

June 15, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

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QUESTIONS

FACTS

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, provides that as of July 1, 1972, no federal agency shall approve grants for projects sponsored by a state agency unless the state agency makes certain assurances. Those assurances are:

- (1) That fair relocation payments will be provided to persons displaced from their homes and businesses by the project;
- (2) That a relocation assistance program will be offered to displaced persons;
- (3) That decent replacement dwellings will be available to displaced persons within a reasonable time prior to displacement; and,
- (4) That the agency will acquire land and reimburse property owners in accordance with the acquisitions and compensation policies of the act

QUESTIONS

Do the Aviation Board, boards of county commissioners, and municipalities have authority to make these assurances in order to obtain federal funds for airport construction projects?

CONCLUSION

Yes.

OPINION

{*111} ANALYSIS

Our examination of the authority of the Aviation Board, county commissioners, and municipalities to make the assurances described above will be simplified if we first characterize the nature of the agreement in which these assurances are made. The

agreement is a contract. The state governing body promises to do certain things if the federal agency supplies funds, and the federal agency promises to supply funds if the state governing body promises to do certain things. Each party's actions are promised as consideration for the promise of the other party's actions.

In this case one of the promises the state body makes in return for federal funds is to provide several forms of assistance to persons displaced by the project to be funded. The state, in effect, promises the federal agency that it will pay certain sums to persons not parties to the contract in return for federal funds. This transaction is a third party beneficiary contract, and it has been approved by the New Mexico courts. See **Hoge v. Farmers Market**, 61 N.M. 138, 296 P.2d 476.

It is important to note that the payments to third parties are not gifts or donations. The state agency receives considerable funds from the federal agency as consideration for making payments to third parties. The transaction is the same as if the state delivered the funds to the federal agency which in turn paid the third parties. In either case the state agency is fulfilling a contractual obligation. Article IX, Section 14, of the New Mexico Constitution, which forbids state donations to private persons, is consequently not applicable to this transaction. There being no constitutional objection to this kind of agreement, we need only to examine the relevant statutes to determine whether they authorize the state agencies involved to make third party beneficiary contracts to obtain federal funds for airports.

Section 44-1-10.5H (2), N.M.S.A., 1953, authorizes the Aviation Board to "accept . . . and expend federal moneys"; in addition the section provides:

"All federal moneys accepted under the subsection shall be accepted and expended by the board **upon such terms and conditions as are prescribed by the United States**. The board, on behalf of the state, may enter into **any** contracts, with the United States or with any person, which may be required in connection with a grant or loan of federal moneys for airport or air navigation facility purposes." (Emphasis supplied.)

The subsection places no limits on the terms or conditions which the board may accept for receipt of federal money, nor does it limit the kinds of contracts which the board may make. This grant of power is easily broad enough to include the power to make the assurances required by the Relocation Assistance and Real Property Policies Act of 1970.

The statutes authorizing counties and municipalities to seek federal aid for airport construction are less specific but broad enough to authorize the assurances required by the federal law. Section 15-37-34, **supra**, provides:

"The respective boards of county commissioners are authorized and empowered to seek and obtain, if possible, from the United States government or any department or agency thereof, financial aid and assistance to carry into effect the purposes hereof."

{*112} Section 14-40-4, **supra**, provides municipalities may:

"A. Acquire by purchase, lease, gift or otherwise, and may establish, construct, improve, maintain and operate an airport or any airport facility either inside or outside the limits of the municipality; . . .

B. Perform any other act necessary to carry out the provisions of the Municipal Airport Law."

The statutes do not limit the means which these governmental bodies may employ to obtain federal aid. In view of the legislative intent to encourage airport development, such restrictions should not be read into the statute gratuitously. The power to make contracts, including third party beneficiary contracts, in order to obtain federal aid for airports can be fairly implied from the statute. "It is a fundamental rule of construction that when a power is conferred by statute everything necessary to carry out the power and make it effective and complete will be implied." **Kennecott Copper Corp. v. Employment Security Comm'n**, 78 N.M. 398, 432 P.2d 109.

Other legislation supports this liberal construction. Section 44-1-10.5H (2), **supra**, which empowers the Aviation Board to contract for federal aid, also contains the following provision:

"Provided that nothing contained in this section shall affect the power of any local government to contract with the United States or any person in connection with a grant or loan of moneys for airport or air navigation facilities **in accordance with the terms and conditions upon which such funds were made available.**" (Emphasis supplied.)

The legislature evidently assumed that county and municipal governments have plenary power to contract for federal funds.

We conclude, then, that the Aviation Board and county and municipal governments have full authority under existing legislation to make the assurances required by the Uniform Relocation Assistance and Real Property Policies Act of 1970.

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