

## Opinion No. 43-4240

February 24, 1943

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. Burton G. Dwyre, State Highway Engineer, State Highway Department, Santa Fe, New Mexico. Attention: Mr. L. D. Wilson Right of Way Engineer

We have your letter of February 13, 1943, in which you request an official opinion of this office concerning whether or not the State Highway Department may authorize an airplane to land on a particular portion of the New Mexico highway at a definite regular time in order that a rural airmail route may be established.

In answer to your question, I quote from a portion of Section 58-611 of the New Mexico 1941 Compilation which provides:

"It shall be unlawful to operate, haul or conduct over any public highway or street any vehicle, tractor, engine, truck, load, building or other object, more than eight (8) feet in width except loads of hay, straw or other farm products **without a permit** from the state, county or municipal authority in control of such highway or street, which permit shall specify the manner of operation thereof so as not to prevent as far as possible inconvenience and danger to the traveling public and damage to the surface."

In view of this Section it would appear that if the Highway Department has control of the portion of the highway that is involved that a permit may be granted for such use by the Highway Department. This is a question strictly up to the discretion of the Highway Department, and this office by writing this opinion is in no way committing itself as approving or disapproving the issuance of such a permit, but is merely pointing out the power of the Highway Department in connection with such a problem.

In further connection with this question, however, I will state that a permit by the Highway Department will not alone legalize the plan. I call your attention to Section 47-105 of the New Mexico 1941 Compilation which provides:

"The public safety requiring and the advantages of uniform regulation making it desirable, it shall be unlawful for any person to operate any aircraft within this state, in any form of navigation whatsoever, in violation of the air traffic rules adopted by the state corporation commission as hereinafter authorized."

The Corporation Commission has adopted the following Civil Air Regulation:

"Except upon the prior approval of the Administrator, or his authorized representative, no person shall:

(1) Take off any aircraft from a place other than a designated landing area, or

(2) Land any aircraft in any place other than any designated area except where such landing is caused by unforeseeable circumstances beyond the control of such person, in which event the pilot of the aircraft shall make a report to the Administrator or his representative, at the landing area at which he was crashed as soon as possible, and in no case more than twenty-four hours after such landing, setting forth fully the reason therefor."

Unless this rule is complied with the plan which you submit to us would, in fact, be unlawful under our statutes. In view of this fact it would appear that if the Highway Department should issue a permit that they should make it contingent upon a proper clearance with the Civil Aeronautic Authorities and our Corporation Commission. Otherwise your permit might in effect be held to be authorizing an unlawful act and would, therefore, be void and of no force and effect as against public policy.

Hoping that the above fully answers your question, I remain

By HARRY L. BIGBEE,

Asst. Atty. General