

Opinion No. 53-5628

January 7, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Morris Abram, Warden Penitentiary of New Mexico Santa Fe, New Mexico

{*5} In reply to your letter of December 17, in which you request an opinion as to whether or not it is legal to move the Penitentiary of the State of New Mexico out of Santa Fe County, I fail to find any specific prohibition in the Constitution that prevents the moving of the penitentiary from Santa Fe County. The only thing I find in the Constitution is that Sec. 1 of Art. 14 makes the penitentiary at Santa Fe, together with other institutions in the state, {*6} a state institution. The language "The Penitentiary at Santa Fe" is merely descriptive and not mandatory in our opinion, although there is a legal question involved which perhaps should be determined by filing a declaratory judgment action.

Section 45-101 of the 1941 New Mexico Statutes Annotated (P.S.) reads as follows:

"The general government and management of the penitentiary shall be vested in five (5) commissioners, who shall be appointed by the governor as in the constitution provided, and the governor shall have power at any time to remove any of said commissioners, and appoint their successors. Said commissioners, and their successors in office, shall constitute a body corporate under the name and style of 'The Penitentiary of New Mexico,' and said corporation shall have the right as such to sue and be sued, to contract and be contracted with, to buy, own, hold, manage, lease, sell, mortgage and otherwise handle and dispose of all such real, personal and mixed property as in the judgment of the commissioners may be necessary and proper for the operation and management of the penitentiary, including the right to acquire, maintain and operate any necessary farm, or farms, at such places in this state as the commissioners shall designate."

This statute gives the Penitentiary Commission board powers, including the power to sell real estate, personal and mixed property.

It is therefore our opinion that under the broad powers of the above quoted statute to sell real, personal or mixed property, the Penitentiary Commissioners have the authority to move the penitentiary out of the County of Santa Fe if in their judgment they deem it necessary and proper for the operation and management of the penitentiary.

I trust that this fully answers your inquiry.

By: Hilario Rubio

Asst. Attorney General