

Opinion No. 53-5755

May 15, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mrs. Beulah Wiley, Secretary-Treas. Girls' Welfare Home Box 6038, Section B
Albuquerque, New Mexico

{*155} This will acknowledge receipt of your letter of May 6, 1953, requesting the opinion of this office upon the following question:

"Does the Girls' Welfare Board have the authority to execute a lease for excavation of sand and gravel on property belonging to the State of New Mexico Girls' Welfare Board?"

We note, first, that there is no specific provision in Art. 5, Ch. 45 of the 1941 Compilation placing the Girls' Welfare Home under the jurisdiction of the Girls' Welfare Board.

Further, however, even if the property of the Girls' Welfare Home is under the jurisdiction of the Girls' Welfare Board, we do not feel that the authority to execute this lease has been conferred upon your board by statute. The powers of the board are set up under § 45-502 of the 1941 Compilation and empower the board to "receive, educate, maintain, discipline, control and parole girls under the age of eighteen (18) years committed to it by the district judges of the state." This section does not directly give the board the power to own or dispose of real estate or any interest therein. Since this authority has not been specifically conferred by the Legislature, the Girls' Welfare Board has the power to execute the lease in question only if such a power can be implied from the powers conferred. In 42 Am. Jur., Public Administration Law, § 26, it is stated:

"Administrative boards, commissions, and officers have no common-law powers. Their powers are limited by the statutes creating them to those conferred expressly or by necessity or fair implication. General language describing the powers and functions of an administrative body may be construed to extend no further than the specific duties and powers conferred in the statute."

While we do not here determine if your board has the power to hold real estate in order to adequately exercise the powers given it under § 45-502, we do not feel that this necessarily carries with it the power to sell sand and gravel from the property.

We suggest that at the next legislative session you seek legislation giving you this authority and also legislation {*156} definitely placing the Girls' Welfare Home under the control of your board.

Because of the factors above mentioned it is the opinion of this office that the Girls' Welfare Board does not have the authority to execute a lease for the excavation of sand and gravel on property belonging to the Girls' Welfare Home.

By: W. R. Kegel

Assist. Attorney General