

Opinion No. 55-6079

January 19, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Wayne Collins President Board of Commissioners Penitentiary of New Mexico, Santa Fe, New Mexico

This office is in receipt of your request for an opinion upon possible alternatives for the handling of monies which are to be paid the Penitentiary from the sale of certain real property to the State Highway Commission. As I understand it, the Highway Commission has placed in escrow the sum of \$ 200,000.00, \$ 100,000.00 of which has been ordered released to the Penitentiary since one condition of the sales agreement, delivery of deed, has already been accomplished, and \$ 100,000.00 of which will be released to the Penitentiary upon other conditions being met.

Section 42-1-11, N.M.S.A., 1953, provides for a continuing appropriation of all amounts received by the Penitentiary from the sale and mortgage of its real property but this continuing appropriation applies to monies which are to be used for buildings or other improvements upon property **owned** by the Penitentiary. Ownership as used within this section is possession of legal title. This is apparent in view of §§ 42-1-1 and 42-1-4, making the Penitentiary a corporation, and providing for the transfer of legal title of State lands used by the Penitentiary from the State of New Mexico through deed executed by the Governor. In the event therefore, that you have legal title to the lands upon which the improvements or buildings are to be placed, no further appropriation by the Legislature is necessary for the funds in question. There are two alternatives open to you for handling the above funds. These are:

1. Payment into the State Treasury and disbursement therefrom under State Treasury procedure.

2. Section 11-2-54, N.M.S.A., 1953, provides that penal institutions of the State may be exempt from the provisions of Section 11-2-3, N.M.S.A., 1953, which latter section requires that the monies be paid into the State Treasury. Section 11-2-53 provides that the funds of such institutions may be deposited in a qualified depository to the account of the Board of such institution. By implication, disbursement thereof under this section shall be made by the Treasurer upon authority of the Board. In this connection it may be stated that the Treasurer of the State of New Mexico is the ex officio treasurer of the Board of Directors of the State Penitentiary, and therefore no new bond would be required of the Treasurer since he is already bonded.

Under either of the two alternative methods above, an appropriation by the Legislature is necessary in the absence of ownership as above defined. If the Penitentiary has legal title to the land upon which the buildings or improvements are to be placed, then the

additional appropriation is not necessary and either of the two methods above may be utilized for handling the funds.

You ask the further question as to whether or not the money could be left in escrow with instructions to the escrow holder to invest same in short term interest bearing notes for you until such time as you wish to spend it for the purposes outlined. It is the opinion of this office that once the money is payable to you under the agreement which you have entered into with the State Highway Commission, then it becomes your duty to receive the same and process it through either of the two methods mentioned above, and same may not be left with the escrow holder.

Trusting that this answers your questions, I am

By:

Santiago E. Campos

Assistant Attorney General