

## Opinion No. 56-6444

May 22, 1956

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. D. M. Smith, Jr., State Comptroller, State Capitol Building, Santa Fe, New Mexico

You have related that the Contractors' License Board and the State Bank Examiner are desirous of securing quarters near the State Capitol. And further that these agencies have monies available from fees collected to secure such accommodations if it is legally permissible to do so. Touching this situation you inquire:

"(1) Was the Capitol Buildings Improvement Commission set up as a permanent commission to secure and hold title to real property or is additional legislation necessary to continue the Capitol Buildings Improvement Commission before funds which they now are authorized to spend under Chapter 23 or Chapter 284 of the 1955 Session Laws may be used?

"(2) Can the Board of Finance allow the Contractors' License Board and/or the State Bank Examiner to enter into a contract on a rental purchase basis to secure the land and buildings for use by these agencies?

"(3) If your opinion is that the Capitol Buildings Improvement Commission has the authority to secure and take title for the State of New Mexico to additional lands and buildings near the State Capitol Building, and if money cannot be transferred from the Contractors' License Board and/or the State Bank Examiner to make the purchase, could authorization be legally given to the Contractors' License Board or Bank Examiner to make permanent type improvements on property secured and paid for by the Capitol Buildings Improvement Commission?"

Generally a State agency has no power to acquire and hold title to real estate unless specific authority to do so is provided by law.

In the original Act creating the Capitol Buildings Improvement Commission are contained the provisions touching the general powers of the Commission to acquire real property. These are:

"Said commission shall have full power and authority to do any and all acts necessary and proper in and about the acquisition of additional lands, for the alteration, reconstruction and redesigning of the present capitol building and the erection of new and additional buildings, including an executive mansion, at Santa Fe, . . ." Section 6-2-7, N.M.S.A., 1953 Compilation.

"Any additional buildings shall be erected on the present capitol grounds, or on land adjacent thereto, which shall be acquired; . . . **Such additional land as may be acquired by donation or gift**, and the title to any lands so acquired, shall vest in the state of New Mexico." (Emphasis Supplied) Section 6-2-8, N.M.S.A., 1953 Compilation.

"The Commission is hereby authorized to acquire additions to the present capitol grounds, **by gift or donation only**,. . ." (Emphasis Supplied) Section 6-2-9, N.M.S.A., 1953 Compilation.

The Commission's general power to acquire real property for the State is thus limited to acquisition by gift or donation. However, in 1955 the Legislature appropriated to the Commission the sum of \$ 142,000.00 and in the Act making this appropriation it provided:

"The funds hereby appropriated to each of the state institutions and agencies listed in section 1 of this act shall be expended solely for . . . , **and including the purchase of land**, as may be determined to be necessary in the case of each institution or agency by its board of regents or other governing authority" (Emphasis Supplied) Chapter 284, Section 2, Laws of 1955.

The language underlined indicates that to the extent of \$ 142,000.00 the Commission has the power to purchase realty notwithstanding the general limitation to acquire by gift or donation only contained in the original Act. The specific power to acquire by purchase governs over the general power to acquire by gift or donation only to the extent indicated.

Now the Commission is permanent in the sense, at least, that it presently exists. And we believe that it still possesses the power given it by the Legislature in the original Act. Chapter 53, Laws 1945. The Legislature must so have considered it, for two Acts were passed in 1955 touching the affairs of the Commission. The first, Chapter 23, Laws of 1955, provides for the amendment of Section 2, Chapter 53, Laws of 1945, and provides in substance that monies in the State Capitol Building Fund or the State Building Fund which have already been appropriated, may be used by the Commission for certain enumerated purposes. And secondly Chapter 284, Laws 1955, mentioned above, appropriated \$ 142,000.00 from the State General Fund to the Commission.

Your first question is thus answered as follows:

The Commission may, by purchase, acquire land, title to which will vest not in the Commission but in the State of New Mexico to the extent permitted by Chapter 284, Laws 1955. Above and beyond this the Commission may acquire land under the powers given it under the original Act by gift or donation only. No further legislation is necessary to authorize the Commission to spend the funds dealt with in Chapter 23, Laws 1955, and appropriated by Chapter 284, Laws 1955.

Regarding your second question, this preliminary observation should be made; neither the Contractors' License Board nor the Bank Examiner are authorized to purchase and take title to real estate. However, we can see no reason why either of these agencies may not enter into a contract of lease purchase. Since each agency is now paying rent there is no objection to the execution of such a contract. It would indeed be highly practical and desirable that such rental payments be applied to the purchase price of property which can eventually belong to the State.

If it is contemplated that either of these agencies own the property and title be held by them, then between now and the time the purchase price is fully paid legislation could be secured allowing these agencies to take title. However, such a contract could be entered into now with the provision that title instead of vesting in the particular agency would vest in the State when and if the purchase price is fully paid. The payments on such a contract would, of course, have to be kept within the amounts allocated for rentals in the budgets of these agencies.

Your second question is answered in the affirmative.

Regarding Question 3, as pointed out above, the Capitol Buildings Improvement Commission has the power to acquire realty by purchase to the extent permitted by Chapter 284, Laws 1955. This it may do presently. However, once purchased, the permanent improvements to be placed thereon would have to be made with funds appropriated to the Commission for that purpose and we doubt, and hold as our opinion, that if either of the subject agencies were permitted to use these buildings that they could use their funds to make permanent improvements thereon unless such authorization can be found in their particular appropriations. Funds appropriated for purposes other than capitol outlay could not be used for the purpose of placing permanent improvements on such lands.

It may be further pointed out that if these agencies enter into lease purchase agreements as outlined in Question 2, that the Capitol Buildings Improvement Commission could not spend any of its funds on such lands. The Commission is limited in building or making alterations and improvements on lands and buildings owned by the State. In the case of a lease purchase agreement the title remains in the lessor until the purchase price is fully paid.

I trust the above helps answer your inquiries.

By: Santiago E. Campos

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