

Opinion No. 56-6513

August 23, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mrs. Natalie Smith Buck, Secretary of State, State Capitol Building, Santa Fe, New Mexico

In your letter of August 7, 1956, you inquire as to the status of a parcel of state property situated at 329 Don Gaspar Avenue. This property was previously occupied by the State Highway Department and has now been vacated. You ask whether the same is under the control of the Capitol Custodian.

Section 1 of Chapter 58, Laws of 1951, provides as follows:

"Section 1. All buildings now or hereafter constructed or remodeled under the authority of Chapter 53 of the Session Laws of 1945, and all buildings, except the Supreme Court building, owned or occupied by the State of New Mexico or agencies or departments thereof within a radius of two blocks of the capitol grounds, shall be under the care, custody and control of the capitol custodian, to the same extent and in the same manner now provided by law."

The building in question was purchased after the effective date of this Act. The validity of its purchase was discussed in Attorney General's Opinion No. 5555 dated June 27, 1952, a copy of which opinion is enclosed herewith for your information. You will note that the specific question involved herein was not presented or discussed in that opinion.

The control provided by the law prior to the passage of Chapter 58, Laws of 1951, was apparently rather broad. Section 6-1-15, N.M.S.A., 1953 Compilation, being Chapter 135, Section 6, Laws of 1935, provides:

"All property, real or personal, the title to which may be acquired by the state in pursuit of the foregoing objects, is hereby committed to the care, custody and control of the Capitol Custodian."

That it was within legislative contemplation that the Capitol Custodian should determine the occupancy of the buildings and the assignments of space is clearly shown by Section 39-3-6, N.M.S.A., 1953 Compilation, and Section 67-23-27, N.M.S.A., 1953 Compilation, requiring the Capitol Custodian to provide quarters for various State agencies and boards.

We have also considered the matter in light of the broad constitutional authority granted the State Highway Commission under certain circumstances and for certain purposes. We find in it nothing inconsistent with the right of the Legislature to control buildings

owned or purchased by the State Highway Commission. It is our understanding that the Commission has been of this opinion, as shown by its actions in complying with Section 6-1-8, N.M.S.A., 1953 Compilation, with respect to securing the approval of the State Comptroller, for the sale of property is applicable to property owned by it. If this be the case, we can see no reason why Chapter 58, Laws of 1951 is not equally applicable.

Therefore, it is our conclusion that the property above mentioned is within the contemplation of Chapter 58, Laws of 1951, and is now under the care, custody and control of the Capitol Custodian.

By: Walter R. Kegel

Assistant Attorney General