

## Opinion No. 56-6562

December 21, 1956

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

**TO:** State Highway Commission, State of New Mexico, State Highway Building, Santa Fe, New Mexico. Attention: Mr. L. D. Wilson Chief Highway Engineer

We have your letter of November 7, 1956, concerning our opinion as to whether the State Highway Commission, with the approval of the State Board of Finance, can now sell or lease the property at 329 Don Gaspar Avenue, Santa Fe, New Mexico.

By our Opinion No. 6513, we concluded that the Capitol Custodian was authorized to take the care, custody and control of this building, and we understand it is now being occupied by the Division of Courtesy and Information.

In that opinion we did not express, nor intend to express, anything concerning the disposition by way of sale, lease or disposition of proceeds of that building. The law of this State is to the effect that all statutes must be construed in harmony with all other statutes, if such harmonious construction can be, by interpretation, accomplished.

It is obvious that any building owned by any State agency is, in truth and fact, the property of the State of New Mexico, as no department, agency or other arm of the State can be held to be independent of the State. Thus, the State Highway Department, upon the acquisition of any property, is merely holding such property as a part of and for the State of New Mexico.

The Legislature has provided for strict accountability by each State agency for its property as well as its moneys, §§ 11-1-5 to 11-1-15, N.M.S.A., 1953 Compilation, and § 11-1-18 specifically required an inventory of all properties in the hands of State agencies, and provides for liability of State officials for failure to account for moneys and properties.

The State Board of Finance is, of course, restricted by the provisions of § 11-1-20, N.M.S.A., 1953 Compilation, from transferring certain funds, among which is included the Road Fund. The building in question was purchased from Road Fund moneys, and such building does not lose its identity as a Road Fund asset after it has become real property. In *re Tatum*, 70 N.Y.S. 634, *Kratz v. Slaughter's Ex'ers.*, 214 S.W. 878, *Elter v. Tuck*, 91 S.W. 2d 875, and in a case handed down by our Supreme Court, the term "fund" was held to include the moneys, the capital, the assets and the accumulation of resources devoted to a particular purpose. In *re Mares*, 42 N.M. 556.

There is, however, in § 6-1-8 a provision that restricts the sale of any property belonging to any department, commission, agency or institution to an approval by the State Board of Finance. This statute, coupled with § 6-1-12 referred to above, which provides for the

care, custody and control by the Capitol Custodian, of all buildings within a radius of two blocks of the capitol to be in the Capitol Custodian, does not pass title to the Capitol Custodian of these buildings, but placed the buildings in his care, custody and control, completely and with discretion as to the use of those buildings, so long as they remain the property of the State of New Mexico. Under this section, the Capitol Custodian would have authority to restrict the use of the building in such a way that the agency which purchased the building would have little or no use whatsoever for the building, but would still retain the degree of ownership which is permitted by law to a board, agency or department, with the overall ownership remaining in the State of New Mexico. The Capitol Custodian, however, cannot dispose of the building nor is the Capitol Custodian the moving agent for the disposition of the building by sale.

Under the provisions of § 6-1-8, N.M.S.A., 1953 Compilation, the agency who has the title in its name must solicit the State Board of Finance for permission to sell. It is our opinion that under this statute the State Board of Finance may declare that the building may not be sold, and if such decision is made by the State Board of Finance, the agency who has the paper title to the building has no recourse whatsoever, and the building remains in the care, custody and control of the Capitol Custodian and may be assigned by him to any department or agency in the State. The controlling factor is the beneficial use to the State, and so long as the State Board of Finance refuses to give permission to sell the building, based upon the theory of beneficial use to the State, it makes no difference whether there is a remuneration running to the department or agency owning the paper or not, such use is permitted by law. If, however, the building is ever sold or any return is obtained from such building, that return must be credited to the fund from which that building was originally purchased.

In view of the provisions of § 11-1-20, N.M.S.A., 1953, above referred to, same provision should be made for reimbursing the road fund from an appropriate source, should the Board determine not to permit a sale of the building, and in the event funds are available for such purpose the matter should be brought to the attention of the Legislature.

For these reasons, we are of the opinion that the State Highway Commission may not sell the building in question without first obtaining the approval of the State Board of Finance. In the event the State Board of Finance deems the present use of the building, or any future contemplated use of the building, beneficial to the State of New Mexico, it may deny the disposal of the building, in which case the State Highway Commission has no recourse whatsoever. So long as the building remains an asset of the Road Fund, it must be accounted for by the State Highway Commission, although the care, custody and control is in the Capitol Custodian. In the event permission is obtained from the State Board of Finance to dispose of such building, the proceeds of such sale would necessarily return and be credited by the Comptroller to the State Road Fund.

We sincerely hope this answers your inquiry.

By: Fred M. Standley

Assistant Attorney General