**Opinion No. 57-156**

July 8, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr., Assistant Attorney General

**TO:** Charles G. Sage, Major General, A.G.C., Adjutant General Santa Fe, New Mexico

## QUESTIONS

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Is there legal objection to the use of state funds for the construction of New Mexico National Guard facilities on land deeded to the State of New Mexico, where such deed contains a reversionary clause conditioned upon the continued use of such land for National Guard purposes and any additional conditions determined by the Secretary of the Army as necessary and proper to protect the interests of the United States?

CONCLUSION

Yes.

## OPINION

ANALYSIS

HR 4363, being Chap. 408, PL 598, June 19, 1956, provides as follows:

"The Secretary of the Army is authorized and directed to convey to the State of New Mexico, all the right, title, and interest of the United States in and to the fifty-one acres of land more or less, of the former Bruns General Hospital area in Santa Fe, New Mexico, now under license to the State of New Mexico, the property to be used for the training and support of the National Guard of New Mexico and for other military purposes, and the conveyance to be made without monetary consideration therefor, but upon condition that it shall be used for the aforesaid purposes and that if such real property shall ever cease to be used for such purposes, all the right, title, and interest in and to such real property shall revert to and become the property of the United States which shall have the immediate right of entry thereon, and to be further subject to the reservation by the United States of all mineral rights, including oil and gas; the right of re-entry and use by the United States in the event of need therefor during a national emergency declared by the President or the Congress, and such other reservations, restrictions, terms, and conditions as the Secretary determines to be necessary to properly protect the interests of the United States."

§ 9-7-3, N.M.S.A., 1953 Comp., in placing the maintenance and operation of the State National Guard facilities under the State Armory Board, states:

"Whenever any arsenal, armory, depot, storehouse, camp ground, rifle range, or other agency or facility for the use of the national guard is owned, rented or leased by the state, the same shall be under the charge of the state armory board. The State armory board shall consist of the adjutant-general and two (2) others, at least one (1) of whom shall be a commissioned officer of the national guard. Said board shall prescribe and promulgate such rules and regulations as it deems necessary for the direction of the local armory boards in the management control, rental for public use, and accounting for the revenues derive from said military facility. Said board shall constitute a body corporate under the name of "The State Armory Board" and shall have all of the powers and privileges of a body corporate. Said board is authorized to acquire property deemed necessary for military purposes, in its name on behalf of the state, by purchase, grant, gift, or condemnation, and is authorized to sell or exchange such property when said board determines it to be no longer necessary or suitable for military purposes; Provided, that all acquisitions by purchase and all dispositions by sale or exchange shall be accomplished only after approval thereof by the state board of finance. The state armory board is authorized to enter into contracts in behalf of the state with United States government or any of its agencies for the purpose of participating in any joint federal military construction program, or for the purpose of receiving money for military construction.

"The title to sites and buildings for armories and other military purposes purchased or acquired heretofore are hereby vested in the state armory board and such property hereafter acquired shall be taken in the name of the state armory board.

"The state armory board shall make such repairs to arsenals, armories, stables, quarters, camp grounds and rifle ranges, depots and storehouses owned by the state as may be necessary to keep same in good and serviceable condition from funds appropriated or otherwise made available for that purpose, and all moneys expended for the erection or repair of such buildings, grounds, and target ranges shall be expended by the state armory board in the same manner as other moneys appropriated for military purposes are authorized to be expended. The members of the state armory board shall be appointed by the governor."

Considering first the authority of the state armory board, we find that it may own (in the name of the state), rent or lease facilities necessary for the conduct of training and the storage of national guard property. Further the board may acquire property in the name of the state "by purchase grant, gift or condemnation, and is authorized to sell or exchange such property when said board determines it to be no longer necessary or suitable for military purchases."

In any case where authority is granted for the leasing or renting of property, it may be logically implied that such authority extends to the ordinary requirements for maintaining the premises in a condition not different from that appreciated at the time of taking

possession. The question herein put, however, goes further and brings into focus the law of expenditure of public funds for improvement on property subject to reversion for conditions broken.

With reference to HR 4363, supra, we find that the Secretary of the Army is authorized and directed to grant a deed of the Bruns Hospital Reservation to the State of New Mexico. Such transfer is, however, limited by a condition subsequent. The discontinued use of the Bruns Reservation for national guard purposes will effectuate the condition stated, bringing to an end any interest granted the state. In addition, the act further reserves a usufruct and right of re-entry by the United States in the event of need during a national emergency and any additional conditions or restrictions as may seem proper to the Secretary.

Considering the law of improvements, we find, in 27 Am. Jur. 261, as follows:

"As a general rule, improvements of a permanent character, made on real estate and attached thereto without the consent of the owner of the fee, by one having no title or interest, become a part of the realty and vest in the owner of the fee as his own property within the protection of the law which renders the removal or destruction thereof an act of waste. The fact that the erection of a building on the land of another was due to a mistake or that the structure was built with the view of enforcing an adverse right in the land does not alter the general rule. The betterment acts or occupying claimant acts are held not to attempt to change this common-law rule of ownership, but instead to work out what is deemed to be the equity of one who has made permanent improvements on the land of another. Of course if the owner of premises asserts that improvements placed thereon by the occupant do not enhance the value of the premises, it is not beyond the powers of a court of equity, which acts to adjust controversies by such terms as good conscience requires, to permit the occupant to remove the improvements, upon restoring possession of the premises to the owner in accord with the order of the court."

Thus, in the absence of a written agreement, entered into by the state armory board on behalf of the State and of the United States, wherein is provided for the right of removal or other manner of disposal, it is the opinion of this office that state funds may not be used as herein above questioned.