

Opinion No. 57-191

August 6, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General By. Paul L. Billhymer,
Assistant Attorney General

TO: Theodore M. Woodruff, Warden, Penitentiary of New Mexico, Post Office Box 1059,
Santa Fe, New Mexico

QUESTIONS

QUESTIONS

1. Is House Bill No. 166 same being Chapter 92, Laws of 1957, constitutional?
2. If constitutional, what property was included in the transfer of the Penitentiary Cordova Road property to the Capitol Building Improvement Commission?

CONCLUSIONS

1. See opinion.
2. See opinion.

OPINION

ANALYSIS

Question 1: House Bill No. 166 is Chapter 92, Laws of 1957, which provides for the transfer of the old Penitentiary property on Cordova Road to the Capitol Building Improvement Commission. By the terms of this Act this property is to be held in the name of the State of New Mexico as a "permanent area and integrated site for future use." There is a presumption of the constitutionality of an act of the Legislature, and it is only in a clear case that a law will be declared unconstitutional. Further, in the construction of the Legislative Act, that construction which makes the Act constitutional will be followed.

In this particular case, the power of the Legislature to make this transfer of property without compensation to the corporate body (State Penitentiary) depends upon the source of the funds with which the various classes of property was purchased. If the income from trust lands (lands provided by Section 7 of the Enabling Act) was used to purchase any of the property at the Cordova Road site, such property would be impressed with a trust as set forth in Section 10 of the Enabling Act. The Legislature, therefore, could not transfer any trust property without fair compensation to the Penitentiary. If the property was purchased with General Appropriation Funds for the

use and benefit of the Penitentiary, of course the Legislature would be authorized to transfer the title to such property as it saw fit.

We would, therefore, construe this law to mean that the Legislature intended to transfer only the property which was not impressed with the trust relationship arising from the Enabling Act, and thus construed, it would be constitutional.

Question 2; The Act sets out as its purpose the dedication of this site for future use as an integrated and permanent area for the state of New Mexico. Since New Mexico has built a new penitentiary, the Legislature did not intend that this site was to be set aside for future penitentiary service. Therefore, the Legislature certainly did not mean to keep this site intact for a penitentiary.

We believe, therefore, that the Legislature would not have intended to transfer to the Capitol Building Improvement Commission any property at this site which could be used beneficially by the Penitentiary at its new site.

We further believe that the Penitentiary would have the right to remove all removable property, together with all other property which could be exclusively used for penitentiary purposes at the new site. Of course, any property which has been purchased with trust funds, as indicated under Section 1, would remain the property of the State Penitentiary until adequate and fair consideration has been paid for the same. This would entail an accounting search to determine the source of funds purchasing the property.