

Opinion No. 57-273

October 24, 1957

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

TO: Mr. Alvis F. Denison, Chairman, Contractors' License Board, P. O. Box 1179, Santa Fe, New Mexico

QUESTION

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May the State Board of Finance authorize an increase in the appropriation of the Contractors' License Board so that the Board can exercise an option under a Lease Purchase Agreement and secure fee simple title to certain real estate?

CONCLUSION

No.

OPINION

ANALYSIS

It is our understanding that the Contractors' License Board is occupying property under a Lease Purchase Agreement at a yearly rental of \$ 6,000. At the end of this lease term the property will be owned by the State of New Mexico. There is an option in said Lease Agreement which authorizes the Contractors' License Board to purchase the property on or before June 30, 1958, for the sum of \$ 38,660.00 plus \$ 4,861.97 improvements.

It is our understanding that the offer has been made whereby the Board may purchase the property on or before October 30, 1957 for the net sum of \$ 39,520.00. This would be a saving of approximately \$ 20,000 in rentals.

We are informed that the appropriation for the 46th and 47th fiscal years does not include monies for the purchase of this building. However, each budget includes sums of money for rentals under the Lease Purchase Agreement. Purchase can be made only if the money comes from the appropriation made by the Legislature.

Article IV, Section 30 of the Constitution of the State of New Mexico provides that money shall only be paid from the Treasury of the State of New Mexico upon appropriations made by the Legislature. If the Legislature has not seen fit to appropriate money for the exercise of the option contained in the said Lease Agreement, we know of no way but which this money could be expended to make this purchase, unless the

money can be paid out of the amount appropriated by the Legislature. This option should have been brought to the attention of the Legislature so that a valid appropriation could have been made for the purchase of the building under the option.

See: C.J.S. (State) Section 160, page 1201; Millet vs. Frohmiller, 188 P. 2d 457, 66 Ariz. 339 and Director of Bureau of Legislative Research vs. Machrell, 204 S.W. 2d 893, 212 Ark. 40.

The State Board of Finance, if it should decide that this was an emergency, could expend the funds appropriated to it to make this purchase. We therefore conclude that this option can only be exercised if the payments come from the present appropriation for the State Contractors' License Board or the State Board of Finance expends its emergency funds for the same.