

Opinion No. 57-274

October 24, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Mr. E. M. Barber, District Attorney Seventh Judicial District, Truth or Consequences, New Mexico

QUESTION

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May a municipal school board deed land, as a gratuity, to the Bureau of Indian Affairs, Department of the Interior, so that said Bureau may erect dormitory facilities to be used by Indian students attending schools under the jurisdiction of the particular municipal school board?

CONCLUSION

No.

OPINION

ANALYSIS

In general, municipal school boards have like powers over schools under their jurisdiction as do county school boards over schools under their jurisdiction. Section 73-10-2, N.M.S.A., 1953 Compilation. And we take this as being tantamount to a general similarity of powers in regard to public school matters.

County boards of education may dispose of school property in accordance with law, § 73-9-1, N.M.S.A., 1953 Compilation. See also Section 73-9-7, N.M.S.A., 1953 Compilation, giving said boards supervision and control over school sites.

We turn to what is believed by us to be the controlling statute, the same being Section 73-8-14, N.M.S.A., 1953 Compilation, which reads:

"Except as otherwise provided by law, all property belonging to school districts and all property the title of which is or may be vested in the board of education, **shall not be sold, transferred or disposed of, except for cash or its equivalent and with the written consent of the superintendent of public instruction.**" (Emphasis supplied.)

and which clearly prohibits a gift of realty owned by a school district under these circumstances. Any other interpretation would raise a grave question as to the validity of

the statute under Constitution of New Mexico, Article IX, Section 14; *Hutcheson vs. Atherton*, 44 N.M. 144, 99 P. 2d 462; and *State ex rel Mechem vs. Hannah*, 63 N.M. , 314 P. 2d 714. We hold that such is not within the powers of a municipal school board and would be illegal. We find nothing ". . . otherwise provided by law . . ." altering this conclusion.

Opinion of the Attorney General No. 57-59, dated March 22, 1957 obviously has no bearing, treating as it did of transfers of realty between one school district and another school district.