

Opinion No. 57-81

April 24, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,
Assistant Attorney General

TO: Mr. Victor C. Breen, District Attorney, Tenth Judicial District, Tucumcari, New
Mexico

QUESTIONS

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1. May school buildings be sold to local Extension Clubs after permission has been obtained from the Superintendent of Public Instruction without the sale being advertised?
2. May sportsmen in De Baca County force entrance over private land in order to gain access to Federally owned property for fishing purposes?

CONCLUSIONS

1. Yes.
2. See Opinion.

OPINION

ANALYSIS

With reference to question No. 1 the controlling law seems to be found at § 73-8-14, N.M.S.A., 1953 Compilation, which states as follows:

"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."

This office, is construing a similar statute to the above in Opinion No. 4861, 1945-46, said:

"Since the procedure is not set forth specifically for the sale of school property, if the school board has the approval of the State Superintendent, a sale of school property by the board may be made for cash, or its equivalent, at either public or private sale."

In view of the above, it is the opinion of this office that school buildings may be sold to local Extension Clubs without advertising for sale and at a private sale. Without so holding, it would seem that the more advisable procedure would call for a true appraisal, public advertisement of the property and a public sale, but as indicated above, such a course is discretionary.

In regard to the second question, it is our understanding that sportsmen in De Baca County are attempting to force entry over private land in order to gain access to some sixteen acres of Federally owned property in order to fish. It is our further understanding that there is a road which was used for a number of years by such sportsmen and, perhaps, even the general public, which has now been blocked off by the present owner who recently purchased the land.

We have found no statutory authority which would authorize fishermen or the general public to force entry other than the usual condemnation action instituted by the county commissioners and thus making the road a county road. It is possible that a prescriptive right has been obtained by use and a discussion of such a mode of acquiring title is found in *Hester v. Sawyers*, 41 N.M. 497, 71 P. 2d 646.