

## **Opinion No. 58-105**

May 22, 1958

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Joel B. Burr, Assistant Attorney General

**TO:** Ben Chavez, Secretary, State Board of Finance, Santa Fe, New Mexico

### **QUESTION**

#### **QUESTIONS**

In connection with the operation by the State Park Commission of the recreation area at Conchas Dam, may the Commission:

- (1) Purchase gasoline, oil, food, etc. on credit for resale and pay for these items out of the revenue from the operation.
- (2) Purchase a number of rental boats and motors and pay for them by applying a large percentage of the gross revenue against the cost until paid?
- (3) Enter into an agreement with the concessionaire operating the lodge whereby he would purchase certain air conditioning equipment and deduct a part of the amount paid for this equipment from the percentage of rental due the Commission until such time as the units are paid for? At such time, the air conditioning units would become the property of the State.

#### **CONCLUSIONS**

- (1) Yes.
- (2) Yes.
- (3) No, but see opinion.

### **OPINION**

#### **ANALYSIS**

The first two questions of this opinion have arisen out of the position taken by this office in Attorney General's Opinion No. 58-37 to the effect that the State Park Commission has authority to operate directly certain commercial facilities, commonly known as concessions, in State parks. In view of the conclusion reached in that opinion, it is obvious that if the Commission is to operate the concessions in question with any degree of efficiency, it must have the power to enter into various types of purchase

contracts pledging future income from contemplated sales, if necessary, so long as it remains within its appropriation.

Turning then to the general appropriation act, being Chapter 235 of the Laws of 1957, we note that all other income accruing to the Commission has been appropriated to its use. Inasmuch as the future revenues sought to be pledged come within the purview of "other income" which has been appropriated to the use of the Commission, and since the authority to contract for credit is implicit in the sound and efficient operation of any business enterprise, we must conclude that the State Park Commission has the power to enter into agreements of purchase of rental boats and motors, gasoline, oil, food, etc. on credit and pay for the same out of future operating revenues. We, of course, assume that the Commission in making the purchases in question will abide by §§ 6-7-1 et seq., N.M.S.A., 1953 Compilation.

Turning to the last question posed in your inquiry, there is no hesitation on the part of this office in justifying the expenditure of public funds for the acquisition of the equipment in question inasmuch as the same amounts to a capital expenditure. Our only concern is in the method sought to be utilized in making the expenditure. In our opinion, the Commission by entering into such an agreement would, in effect, be circumventing §§ 6-7-1 et seq., N.M.S.A., 1953 Compilation, relating to public purchases. Certainly, no one would contend that the Commission could legally purchase the equipment in question for cash without complying with §§ 6-7-1 et seq., supra. The same does not become more palatable simply because the object purchased is paid for by means of a reduction to a tenant of rents due the State.

On the other hand, we realize that the Commission is without funds with which to make the purchase; that its only means of paying for the equipment in question is with future operating revenues. This office would, therefore, suggest to the Commission that the equipment be obtained by means of a lease purchase agreement whereby rental payments made by the Commission would be credited towards the total price of the equipment with an option on the part of the Commission to purchase when the equipment was totally paid for. In this way, the capital improvement can be made and the Commission can utilize the services of the State Purchasing Agent in acquiring the maximum in quality of equipment at the lowest price to the State.