

Opinion No. 59-44

May 6, 1959

BY: FRANK B. ZINN, Attorney General

TO: Mr. Joseph C. Gardner, Superintendent New Mexico Boys' School Springer, New Mexico

New Mexico Boys' School may use bond proceeds to construct necessary buildings on Game Department lands, if long term lease is taken, not otherwise.

The school may use bond proceeds to purchase lands on which to construct necessary public buildings.

OPINION

{*66} This is in answer to your recent request for my opinion on two questions which are:

Can the Board of Trustees use proceeds of bonds issued pursuant to Senate Bill 29, 24th Legislature (Chapter 367, Laws 1959) to construct and equip buildings on land owned by the State Game Department?

Can the Board of Trustees use proceeds of those bonds to purchase lands upon which it will construct necessary public buildings?

In my opinion, proceeds of the bonds cannot legally be employed to construct and equip the buildings on lands owned by the Game Department unless a long term lease is taken by the Boys' School. The lease should include a provision by which the school will be compensated for improvements in the event the lease is mutually terminated.

As to your second question, my opinion is that the school may use proceeds from bonds issued pursuant to Senate Bill 29 to purchase lands on which to construct necessary public buildings.

The bond proceeds may not be employed to erect and equip the school's buildings on Game Department land without the lease suggested.

The recently enacted Senate Bill 29, which is Chapter 367, Laws of 1959, authorizes use of the bond proceeds for the purpose of:

"* * * erecting, altering, improving or furnishing any necessary buildings, structures, or grounds and acquiring {*67} equipment of certain state institutions * * *"

among which is the Boys' School. There is no specific statutory authority to permit the school to erect and equip the referred to buildings on lands of another state agency.

Certain opinions of this office issued in the past, lend support to your lease proposal **if certain safeguards are met.**

In Opinion of the Attorney General No. 57-80, it was held that county fair buildings could be erected on real estate owned by another party but, on which the county had a long term lease. One facet of the reasoning was the statutory authority of the county to enter into contracts in reference to its property. Such should be compared to Section 13-3-1, vesting in the Board of Trustees the care and preservation of the school's property, and the erection and construction of all its necessary buildings. This appears to be sufficiently broad to authorize the negotiation of a long term lease, designed in part to safeguard the school's buildings.

It is of considerable interest that Opinion No. 57-80 also involved bond proceeds and the use of the money to construct the buildings. The statute applicable to county fair bonds, Section 45-21-2 (P.S.), authorized the expenditure of the proceeds for the construction, erection, etc., of the county fair buildings. But that statute, the same as Senate Bill 29, nowhere contained authority for the construction to be on realty owned by another.

In Opinion of the Attorney General No. 57-156, this office held that state funds could not be expended for the construction of an armory on land deeded to the State, where the deed contained a right of re-entry for breach of condition subsequent. This was because such an arrangement would entail a possible loss of the State's buildings.

On the other hand, it was held in Opinion of the Attorney General No. 58-231, that the State Armory Board could lawfully construct an armory on lease land under a 99-year lease, the lessor being the City of Las Cruces, but only if there were provisions for compensating the State for the value of its improvements in the event of forfeiture of the lease. Otherwise, there was involved a potential violation of Article IX, Section 14, Constitution of New Mexico, prohibiting donations.

To my way of thinking, the fact that another state agency now owns the land is beside the point. It could, in theory, dispose of the land immediately after the Boy's School completed the construction; whereupon the potential violation of the Constitution could arise. But aside from that, Senate Bill 29, Section 5 permits use of bond proceeds only as **specifically** authorized.

I suggest a long term lease, at least for the expected life of any improvements to be erected on the Game Department lands, which should provide for payment of just compensation to the school in the event of cancellation, forfeiture or termination of the lease.

Your second question inquires as to whether proceeds from the bonds may be used to purchase lands upon which the buildings will be constructed. Senate Bill 29 does not contain express authority to purchase lands upon which the buildings will be constructed. However, in view of **Board of County Commissioners v. McCulloh**, 52 N.M. 210, 195 P. 2d. 1005, holding that the power to erect a public building includes by implication the power to purchase land upon which to erect it (all from bond sale proceeds), I believe there is adequate authority to purchase the necessary land.

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