

Opinion No. 59-85

July 29, 1959

BY: Hilton A. Dickson, Jr., Attorney General

TO: Louis Buenabenta, Acting Superintendent New Mexico Boys' School Springer, New Mexico

{*143} This is written in reply to a recent request by Joseph C. Gardner for an opinion on the following questions:

1. Could the Public Welfare Department rehabilitate the buildings at the former tubercular sanatorium at Socorro and then lease these buildings to the New Mexico Boys' School?
2. Does the Public Welfare Act of 1937, as amended, (Sec. 13-1-1, et seq., N.M.S.A., 1953 Compilation) give sufficient authority to the Public Welfare Department to enter into a contract with the New Mexico Boys' School to provide child welfare services to children in need of these services?

It is my opinion that:

1. Yes, the Public Welfare Department can rehabilitate these buildings, then lease them to the New Mexico Boys' School.
2. Yes, the Public Welfare Department can, under the provisions of Section 13-1-1, et seq., N.M.S.A., 1953 Compilation, enter into a contract with the New Mexico Boys' School to provide child welfare services to children in need of these services.

The answer to your first question is found in the provisions of Section 13-1-3, N.M.S.A., 1953 Compilation. This section confers upon the Department very broad powers in carrying out the purpose and performing the duties given it under this and subsequent sections. Subsection (f) of the above quoted section reads as follows:

"To purchase, **lease**, and hold such real and personal property as is necessary and convenient for the carrying out of its powers and duties. . . ." (Emphasis supplied)

When this subsection is read in connection with subsection (g) of the same section which reads:

"To have such powers as may be necessary or appropriate for the exercise of the powers herein specifically imposed upon it"

it becomes clear that the Department has the power to rehabilitate the property owned by it since it would be the exercise of the power necessary. Under Subsection (f), e.g.,

the power to hold real property to carry out the purpose of the Public Welfare Act. Subsection (f) specifically gives the Department the power to lease real property.

It is my view, therefore, that the Department can rehabilitate the buildings under Subsection (g) and can lease the property to the New Mexico Boys' School in furthering the purposes of the Public Welfare Act.

The same section covers the answer to your second question. Subsection (1) of Section 13-1-3, N.M.S.A., 1953 Compilation, provides that the duties of the Public Welfare Department include, among other things:

"To establish, extend and strengthen public welfare services for children."

The proposed suggestion in your second question clearly falls within {**144*} the meaning and intent of this subsection. The Public Welfare Act provides for these services in Section 13-1-4, N.M.S.A., 1953 Comp., which in part provides:

"(c) Administer and supervise all child welfare activities, service to children placed for adoption, service and care for homeless, dependent and neglected children, service and care for children in foster family homes **or in institutions because of dependency or delinquency.** . . ." (Emphasis Supplied)

It will be noted that the emphasized portion of the above section clearly contemplates a service by the Public Welfare Department in the manner you propose in your second question.

It is therefore my view that the Public Welfare Department can enter into a contract with the New Mexico Boys' School to provide services to children in need of child welfare services. The propriety of taking such actions and entering into such agreements is, of course, left to the Public Welfare Department in the exercise of its sound discretion.