

## **Opinion No. 60-156**

September 1, 1960

**BY:** OPINION of HILTON A. DICKSON, JR., Attorney General

**TO:** Mr. Marshall S. Hester, Superintendent New Mexico School for the Deaf 1060 Cerrillos Road Santa Fe, New Mexico

### **QUESTION**

#### QUESTION

Does the State and its subdivisions have the authority, under Ch. 324, Laws 1959, to condemn part of the property owned by the New Mexico School for the Deaf inasmuch as the lands were acquired partly by the Enabling Act Trust Funds?

#### CONCLUSION

Yes.

### **OPINION**

#### **{\*545} ANALYSIS**

As you will recall, this office ruled in Opinion of the Attorney General, No. 57-329, dated December 30, 1957, that the State and its political subdivisions cannot condemn, by right of eminent domain, real property which is already devoted to a public use, absent specific authority from the Legislature. The Legislature, subsequent to that opinion, has passed Ch. 324, Laws 1959, which gives the State and all of its political subdivisions, the right to acquire public property by right of eminent domain for use of public highways. It shall be noted that in such cases the State Board of Finance shall first determine the greater public need.

The question you raise is whether the fact that the public lands were acquired by Enabling Act Trust Funds prohibits the condemnation as contemplated in Ch. 324 above. The fact that public lands were in part or whole acquired by trust funds is, in our judgment, immaterial. The chapter above referred to draws no such distinction. It subjects all public land to eminent domain without distinction so long as a determination has been made that the land is required for a greater public need.

While case authority on this subject is scant, there is some authority to the effect that lands held in private or public trust are not exempt from the right of eminent domain. An indication of such authority is found in 329 U.S. 230, dealing with condemnation of lands held in public trust.

By: Boston E. Witt

Assistant Attorney General