

Opinion No. 61-123

December 4, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General William E. Snead, Assistant Attorney General

TO: Mr. Bill Kreuch, Administrative Assistant, New Mexico State Park, Commission, Santa Fe, New Mexico

QUESTION

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To what extent does the Park Commission have authority to lease property to persons other than state agencies?

CONCLUSION

See analysis.

OPINION

ANALYSIS

The facts from which the above question arises are that the State Park Commission owns a building suitable for office space. Approximately 1/3 of the space in the building has been rented to a state agency. The remainder of the building remains vacant and no other state agencies appear to be interested in leasing this space. Therefore consideration is being given to leasing the remainder of the building to someone other than a State agency. Such lease would likely have to be for a term of at least three years.

The question, in essence, is whether a lease can be made under the above circumstances.

The only specific authority given to the State Park Commission to dispose of lands acquired for state park or state recreational purposes is contained in Sections 4-9-14 and 4-9-15, N.M.S.A., 1953 Compilation. These statutes give the Commission the authority to dispose of property to any state educational institution or other state agency having authority to hold, and a use therefore. Approval of no other agency or board is necessary if the Commission decides that the property is not necessary for their purposes, but the statute covers only disposal to other state agencies or educational institutions. Therefore, the statutes do not give the authority sought in this case.

The authority to lease lands to other than state agencies, boards, departments, or commissions is found in a statute enacted to give a general power to **all** state departments, commissions, agencies or institutional boards. This statute, Section 6-1-8, N.M.S.A., 1953 Compilation (P.S.), provides in subsection A that:

"Any department, commission, agency or institutional board of this state, or local public school district is empowered to sell or otherwise dispose of real or personal property belonging to such state department, commission, agency, institution or local public school district, subject to approval of the state board of finance."

Properly interpreted, this statute gives the State Park Commission, as well as any other commission or agency of the state, the authority to sell, or otherwise dispose of, any property owned by the state, subject to the approval of the State Board of Finance.

Under the above interpretation, there is no conflict with Sections 4-9-14 and 4-9-15, N.M.S.A., 1953 Compilation. The latter provisions merely give the Commission the additional power to dispose of the property without approval of the State Board of Finance where the disposition is to another state agency or state educational institution.

There is no question but that the words "or otherwise dispose of" contained in Section 6-1-8, N.M.S.A., 1953 Compilation (P.S.), include a lease arrangement. Subsection B of the same provision specifically authorizes the chairman of the commission to "execute such deeds, leases . . . or other documents necessary to convey all or any interest in the real or personal property of the governing authority . . ."

The only other limitation on the action of the commission is that contained in Section 6-1-8.1, N.M.S.A., 1953 Compilation (P.S.), wherein it is provided that if the sale or lease is for a period exceeding twenty-five years in duration and is for a consideration of \$ 100,000.00 or more, the legislature must approve in order for the lease or sale to be effective. Until the two limitations have been reached, the only prerequisite to the Commission action is approval of the State Board of Finance.

Insofar as the prior opinion No. 59-145 is to the contrary, this opinion is controlling.