

Opinion No. 62-27

February 2, 1962

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

TO: Mr. Robert D. Castner, State Auditor, State Capitol, Santa Fe, New Mexico

QUESTION

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Does the Tecolote Board of Trustees or the Tecolote Land Grant come within the definition of local public bodies subject to audit by the State Auditor?

CONCLUSION

No.

OPINION

ANALYSIS

Your question concerns the subjection of the books and records of the Tecolote Land Grant to audit by the State Auditor's office. Section 4-4-2.4, N.M.S.A., 1953 Comp. (PS), requires the State Auditor to audit the financial affairs and transactions of any State agency or local public body whenever a request is received from the Director of the Department of Finance and Administration or whenever the State Auditor believes the same advisable. It is obvious from a reading of this statute that in order for the section to apply to the Tecolote Land Grant situation, it must be construed to be governed by a local public body, since it cannot be seriously argued that the Board of Trustees is a State agency. See **State v. Board of Trustees of Town of Las Vegas**, 28 N.M. 237 (1922).

Section 4-4-2.1 defines a local public body as the following:

"Every political subdivision of the state of New Mexico which expends public money from whatever source derived, including but not limited to counties, county institutions, boards, bureaus or commissions; incorporated cities, towns or villages; drainage, conservancy, election or other districts; charitable institutions for which appropriations are made by the legislature; county, municipal, consolidated union or rural districts; and any office or officer of any of the above."

The Tecolote Grant is recognized specifically by statute, under Secs. 8-10-1 through 8-10-6, which provide for the establishment of the Board of Trustees and the delegation of its boundaries and duties. Section 8-10-1 provides the following:

"The management and control of that certain tract of land, known as the Tecolote land grant, situated in the county of San Miguel in the state of New Mexico, and patented by the United States to the town of Tecolote, hereby vested in a board of trustees, to be elected as provided, which said board of trustees shall be a body corporate under the name of the board of trustees of the Tecolote land grant, and with full power under such name to sue and be sued. . ."

It is to be noted that Attorney General's Opinion of 1951-52, No. 5575, stated that a land grant, specifically the San Antonio de las Huertas grant, was a public grant and therefore that the State Comptroller had jurisdiction over it. We do not feel that this opinion is controlling even though the State Auditor now performs the auditing functions formerly performed by the Comptroller since the specific statutory definition of local public body quoted above is substantially different from the former statutory delimitation of the jurisdiction of the State Comptroller.

The controlling consideration is whether the Tecolote Land Grant expends public money. In our opinion, it does not. In the case of **Kavanaugh et al. v. Delgado**, et al., 35 N.M. 141, 290 P. 798 (1930), the Supreme Court recognized that the "town" of Tecolote had no power to raise revenue by taxation and that the land owners are not paying citizens of it.

It might be argued that regardless of where the land grant obtains its money, that the money would be converted to public money upon use by the land grant if the grant was a political subdivision of the State. This is not the result which this office has reached upon a consideration of the many cases involving community land grants. Referring again to the case of **Kavanaugh et al. v. Delgado**, et al., supra, we find the Court saying:

"The community land grant is an anomaly among corporations. While we have termed it a quasi municipal corporation, it is in some respects more like a private corporation. Its principal, if not its only, function is to hold title to and manage its common lands . . ."

This case was followed as to the quasi municipal nature of a land grant corporation, in **Bibo v. Cubero Land Grant**, 65 N.M. 103, 332 P. 2d 1020 (1958), even though the Court stated that the grant was not in fact a corporation. Other cases have indicated that the function of these community land grant boards of trustees is private in nature. In **Merrifield v. Buckner**, 41 N.M. 442 (1937), the Court had under consideration the Chilili grant which was also established by special legislation. The Court in that case said that the Legislature has assumed the function of exercising control over these land grants by passing statutes for their being governed by a board of trustees. But they went on to say that the power conferred on the board is limited to ordinances necessary

for protection of the common property of the grant. The land is subject to taxation and if the taxes are not paid the land is lost.

The fact that the property in these land grants is subject to state property taxation is a strong indication that they are not considered to be the public bodies referred to in the definition of a local public body.

In **State v. Board of Trustees of Town of Las Vegas**, 28 N.M. 237 (1922), the Court held that the Las Vegas grant was not within the term "other municipal corporations" exempted from property taxation under Article 8, Section 3 of the New Mexico Constitution, because such organization is not of the nature of agency or instrumentality of the State government. This case was followed in **Board of Trustees of Town of Tome v. Sedillo**, 28 N.M. 53 (19-22). Since the land grants have not been considered exempted from the property taxation whereas essentially all public bodies of the State have been exempted under the above Constitutional provisions, it would seem that they are not actually considered to be public bodies. Further evidence of this conclusion is that title to common lands of the community land grants can be acquired by adverse possession. **H.N.D. Land Co. v. Suazo**, 44 N.M. 547, 105 P. 2d 744 (1940). Such is not the usual case with political subdivisions of the State.

Under the above analysis, the conclusion must be reached that the Tecolote Land Grant is not subject to audit by the State Auditor. However, it should be pointed out that land owners are qualified to bring suit against the Board of Trustees in order to protect their rights. See **Kavanaugh et al v. Delgado et al.**, supra. Therefore, it would seem that the primary protection of the land owners under such a grant is left to the land owner's initiative.