

Opinion No. 62-87

July 11, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Thomas A Donnelly, Assistant Attorney General

TO: R. C. Derbyshire, M.D., Secretary-Treasurer New Mexico Board of Medical Examiners, 227 E. Palace Ave., Santa Fe, New Mexico

QUESTION

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1. May the Secretary-Treasurer of the New Mexico Board of Medical Examiners enter into a five year lease on behalf of such Board in order to acquire private office facilities?
2. If such lease agreement may be executed, would the Secretary - Treasurer's successor upon such Board, be bound by the terms of the lease?

CONCLUSIONS

1. See analysis.
2. See analysis.

OPINION

ANALYSIS

The Statutes creating the New Mexico Board of Medical Examiners, and which specify the duties, powers and authority of the Board, contain no express provisions relating to the power of the Board to enter into contracts for the acquisition of office accommodations.

Section 67-5-2, N.M.S.A., 1953 Compilation, requires that the Board conduct its regular meetings in the State Capitol Building, and provides for the election by the Board of its officers, but does not set out the general authority of such Board in respect to entering into contractual obligations. This section sets out in part:

"On the third Monday in May after their appointment, the members of the said board shall meet in the capitol building, in the city of Santa Fe, New Mexico, and organize by electing one of their number as president, one as vice-president, one as secretary and treasurer, and thereafter regular meetings of said board shall be held in the said capitol building on the third Mondays of May and November in each year, and there shall be no less than two days' session at each meeting."

Although the statutes are silent in respect to the powers of the Board to contract generally, it is implicit that such Board possesses the implied authority necessary to fulfill the duties for which the Board was created. Among the implied powers of the Board would be the authority to maintain office equipment, files and records incident to the carrying out of the Board's statutory functions.

At **81 C.J.S.**, "States", Section 58, at page 977-8, it is stated:

"Generally speaking, state officers, **boards**, commissions, and departments have such powers as may have been delegated to them by express constitutional and statutory provisions, **or as may properly be implied from the nature of the particular duties imposed on them. . . .**" (Emphasis supplied.)

In the current General Appropriation Act, Chapter 254, Laws 1961, Section 8, specific appropriations have been made by the Legislature for the payment of operating expenses during the fiscal biennium. Under such appropriation it is apparent that the Legislature intended necessary office accommodations would be acquired by the Board, and it is obvious that the Board possesses the inherent authority to enter into contracts to obtain such office facilities.

In **81 C.J.S.**, "States", Section 113, at page 1086, the implied authority of State Boards to contract generally, is recognized. This section sets out in part:

"The authority to bind the state by contract need not be express, but may be implied; but it must be an actual, as distinguished from an apparent, authority, and cannot be varied or enlarged by mere usage."

It has also been held in **State ex rel. Ross et al., v. Donahey**, 113 N.E. 263, 93 Ohio St. 414, that:

"The sovereign powers of government cannot be exercised unless suitable quarters are provided for the various governmental departments in the performance of public duty and service. This is axiomatic. Manifestly it is within the sovereign power of the state and particularly is it a legislative function under that sovereignty, for the General Assembly to appropriately legislate so as to furnish the government and its various departments with suitable quarters. . . ."

Under the implied and inherent authority possessed by the New Mexico Board of Medical Examiners to carry out its duty, the Board may lawfully enter into contracts to obtain office accommodations and as an adjunct thereof may sign a lease for a term of years. Under the general statutes creating the Board, and the current Appropriation Act, however, we do not believe that such Board in the absence of specific legislative authorization, may properly negotiate a lease for a period of time in excess of that for which the Legislature may have provided specific appropriations to be expended by such Board, unless such lease is specifically made contingent upon and subject to future legislative appropriations.

In **Ohio v. Medbery, et al.**, 7 Ohio St. 522, the Supreme Court of Ohio considered whether the Board of Public Works in Ohio could bind the State to pay a contractual obligation for a period of five years. The Court determined that no officers of a State Board can enter into any contract, except as otherwise specified, whereby the Legislature will two years after, be bound to make appropriations for a particular object or a fixed amount. The Court in this case stated:

"The sole power of making appropriations of the public revenue is vested in the general assembly. It is the setting apart and appropriating by law a specific amount of the revenue for the payment of liabilities which may accrue or have accrued. No claim against the state can be paid, no matter how just or how long it may have remained overdue, unless there has been a specific appropriation made by law to meet it."

Thus, it is our opinion that the New Mexico Board of Medical Examiners may properly negotiate a lease of office space for Board use. However, such lease may not, in the absence of specific statutory authority, lawfully be entered into for a time period in excess of that for which the Legislature has made an appropriation for the payment of such expenses. Applying this conclusion to your first inquiry above, the Board may properly enter into a lease for the acquisition of private office facilities in an amount not to exceed that appropriated to the Board by the Legislature for office accommodations, and extending in period of time until the close of the fifty-first fiscal year on June 30th, 1963. After the meeting of the next State Legislature, contingent upon sufficient appropriations being available, the Board may renegotiate such lease for a two year period extending to the close of the ensuing fiscal biennium.

In reply to your second question, the Board may negotiate a lease for the purpose of obtaining office accommodations, however such lease should be signed by the president or by both the president and secretary - treasurer of the Board and be approved by the Board in open meeting. In addition the Board officers negotiating such contract, should secure prior approval of the Board by resolution, authorizing the president and secretary to effect such contract.

In **81 C.J.S.**, "States," Section 115, at page 1092, it is pointed out that contracts made by state officers should be made in the name of the State and not individual officers. This section states in part:

"Contracts made by state officers on behalf of the state should be made in the name of the state and not in the individual names of the officers, but a contract purporting to be the act of the state, signed with the individual names of the officers with their official designation affixed, is sufficient, and is the contract of the state and not of the officers personally."

It is generally recognized that a state agency, board or commission may not execute contracts which will bind such body beyond the expiration of the term of office of the officer signing the contract. At **81 C.J.S.**, "States", Section 113, page 1085, 1086 the rule is stated:

". . . a contract extending beyond the term of the officer making it and tying the hands of his successor is ordinarily void as against public policy."

Any lease agreement contemplated by the Board should be made in the name of the State of New Mexico and the New Mexico Board of Medical Examiners rather than in the names of individual Board members. In addition, the lease if made in the name of the Board and signed by both the president and secretary-treasurer of the Board would be effective to bind the Board during the term of such lease agreement, provided it does not extend beyond the period of legislative appropriation.