

Opinion No. 63-81

July 15, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: John S. Mackay New Mexico School for the Deaf 1060 Cerrillos Road Santa Fe, New Mexico

QUESTION

QUESTION

Must the New Mexico School for the Deaf carry fire insurance on its buildings?

CONCLUSION

No.

OPINION

{*173} ANALYSIS

Prior to its amendment Section 6-1-4, N.M.S.A., 1953 Compilation, provided in part:

"All officers and boards charged with the custody and control of public buildings belonging to the state **shall** keep the same insured for the benefit of the state against loss or damage by fire . . ." (emphasis supplied)

The 1963 Legislature in Chapter 257, Laws of 1963, amended Section 6-1-4, N.M.S.A., to read in part:

"All officers and boards charged with the custody and control of public buildings belonging to the state and political {*174} subdivisions including municipalities **may** keep the same insured for the benefit of the state and political subdivisions including municipalities against loss or damage by fire, . . ." (emphasis supplied)

Black's Law Dictionary defines "shall" as being a word of command, denoting an obligation. The word "may" on the contrary, while occasionally construed to be synonymous with the word shall (See **Reese v. Dempsey**, 48 N.M. 417, 152 P.2d 157,) is usually thought to imply permission rather than obligation.

It is a fundamental rule of statutory construction that when the legislature amends a statute substituting one word for another that it intended to change the law. It is, therefore, apparent that when the legislature substituted the word "may" for the word "shall" in Section 6-1-4, N.M.S.A., it intended for the word "may" to be given a different

meaning from the word "shall". "May" must therefore be used in Section 6-1-4, N.M.S.A., 1953 Compilation, in the permissive sense rather than as a synonym for shall.

It is, therefore, clear that it is no longer mandatory for a state agency to insure the buildings entrusted to it against fire. The State School for the Deaf has discretion as to whether it will insure its buildings against fire.

By: Joel M. Carson

Assistant Attorney General