

Opinion No. 65-139

July 22, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Mr. Harry Wugalter, Chief, Public School Finance Division, Department of Finance and Administration, Santa Fe, New Mexico

QUESTION

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When used articles are traded in for new articles is board of finance approval necessary?

CONCLUSION

No.

OPINION

{*232} ANALYSIS

Section 6-1-7.1, N.M.S.A., 1953 Compilation (P.S.), enacted in 1961, provides as follows:

"A. The governing authority of each state agency and local public body, as defined by section 4-4-2.1 New Mexico Statutes Annotated, 1953 Compilation (being Laws 1957, Chapter 248, Section 1), may dispose of any item of personal property belonging to such authority and delete the item from its public inventory, upon a specific finding by such authority that the item of property is:

- (1) Of a current resale value of fifty dollars (\$ 50.00) or less; and
- (2) Worn-out, unusable or obsolete to the extent that such item is no longer economical or safe for continued use by such body.

B. The governing authority shall, as a prerequisite to the disposition of any items of personal property, give notification within thirty days of its action making such deletion by sending a copy of its official finding and the proposed disposition of such property, to the state auditor, duly sworn and subscribed under oath by each member of the authority approving such action.

C. A copy of the official finding and proposed disposition of the property sought to be disposed of shall be made a permanent part of the official minutes of the governing authority."

Section 6-1-8, N.M.S.A., 1953 Compilation (P.S.), enacted as a part of the same Act, provides:

"A. 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; provided, however, the governing authority of each state agency and local public body, as defined by section 4-4-2.1 New Mexico Statutes Annotated, 1953 Compilation (being Laws 19-57, Chapter 248, Section 1), may dispose of items of personal property having a current resale value of fifty dollars (\$ 50.00) or less, belonging to such agency or body without necessity of prior approval of the state board of finance, wherein the governing authority of the state agency or local body has affirmatively complied with the provisions of the preceding section of this 1961 act.

B. The director of the department of finance and administration shall have the power to credit any payment received from the sale of any such real or personal property to whatever fund of such state department, commission, agency, institution or local public school district as he deems appropriate. And the head of such department, or the president, or chairman of the commission, or the governing board of such agency or institution is authorized to execute such deeds, leases, right-of-way easements, bills of sale or other documents necessary to convey all or any interest in the real or personal property of the governing authority without warranty."

These two statutes, when read together, are designed to accomplish two purposes. First, an agency is prevented from depleting its inventory {233} simply because it needs money. Second, funds received from the sale of property are under the control of the Department of Finance. These statutes are basically fiscal control statutes.

Sections 6-5-8 and 6-7-6, N.M.S.A., 1953 Compilation are statutes specifically dealing with trade-in procedures. The first provides as follows:

"In the purchase of motor-vehicles, machinery, equipment or furniture, or 'exchange' used articles as part payment on the purchase-price of new articles, the purchaser shall, in the advertisement and call for bids, describe such used property and therein advise and inform prospective sellers of such new articles, the location and place where such used property may be examined and inspected. In all such cases, the bidder shall state separately the sale price of the new article, and the sum to be allowed as credit thereon for the 'trade-in' or 'exchange' article. The difference between such amounts shall be deemed the 'bid' of the seller for the purposes of this act."

Section 6-7-6, supra, the other "trade-in" statute, provides that:

"In the purchase of motor vehicles or machinery where it is desirable to 'trade-in' or exchange used vehicles or machinery as part payment upon purchase-price of new articles, the exchange may be made by such purchasing agent under rules and at prices for used articles to be determined at the judgment of the purchasing agent as to the value thereof."

Neither of these trade-in laws mentions board of finance approval.

We do not believe that Sections 6-1.7.1 and 6-1-8, supra, amend these statutes by implication. Amendments and repeals by implication are not favored. Further, adequate fiscal controls are built into the trade-in statutes. Section 6-5-8 requires bids. A simple out-and-out sale of property under Sections 6-1-7.1 and 6-1-8 does not so require. Section 6-7-6 gives sufficient control to the purchasing agent.

When the trade-in procedure is used, the agency is not depleting its inventory. It is, on the contrary, bringing it up to date. Secondly, the trade-in process does not result in the agency receiving any money -- a situation which Sections 6-1-7.1 and 6-1-8 are designed to control. Since bids are received in trade-in activities, adequate fiscal controls are present.

For these reasons, we do not believe that Sections 6-1-7.1 and 6-1-8, general statutes, were intended to amend by implication Sections 6-5-8 and 6-7-6, specific statutes.