

Opinion No. 66-28

March 3, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Myles E. Flint, Assistant Attorney General

TO: Joseph C. Ryan, Secretary, Board of Directors, Los Lunas Hospital & Training School, Los Lunas, New Mexico

QUESTION

QUESTIONS

1. Does the Board of Directors of the Los Lunas Hospital and Training School have the power to enter into a 99-year lease with the Rocky Mountain Foundation?
2. Does the Board of Directors of the Los Lunas Hospital and Training School have the power to set the monetary remuneration that would be forthcoming from such a 99-year lease?
3. If the Board does not have the power to enter into such lease, what steps must be taken through the offices of the State of New Mexico to the end that the lease arrangement above described must be consummated and be fully binding on both the Los Lunas Hospital and Training School and on the Rocky Mountain Foundation?

CONCLUSIONS

1. Yes.
2. Yes.
3. See Analysis.

OPINION

{*33} ANALYSIS

The specific powers of the Board of Directors of the Los Lunas Hospital and Training School are set forth in Section 34-3-5 (A) N.M.S.A., 1953 Compilation (P.S.) as follows:

"A. The board of directors of the Los Lunas Hospital and Training School is empowered to select and purchase, or receive as a donation, or lease, or otherwise acquire a suitable and reasonably sufficient tract of land and proceed with the construction of suitable and reasonably sufficient buildings to meet the purposes of the institution. The institution herein created shall be a corporate entity, and through its board of directors,

may have and receive donations of money or property for the purposes of this article from whatsoever source and the board shall exercise the management and control of the property and shall control and invest the proceeds of any donations, reporting on the receipt and investment of donations annually to the governor at the time other receipts and expenditures are reported."

Under this section, the Board was not specifically given the power to sell or lease property.

{*34} However, it is clear that Section 6-1-8, N.M.S.A., 1953 Compilation (P.S.) which was enacted in 1961 does give these powers to the Board. That section provides:

"SALE OF PROPERTY BY STATE AGENCIES OR LOCAL PUBLIC BODIES -- APPROVAL OF BOARD OF FINANCE -- EXCEPTION. -- 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 1957, 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 public 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."

Having answered your first question in the affirmative, it is now necessary to determine the procedure to be used in entering into a lease such as you propose. It is our opinion that any lease of 99 years such as is proposed must be approved pursuant to the provisions of Section 6-1-8.1 N.M.S.A., 1953 Compilation (P.S.) which provides:

"SALE, TRADE OR LEASE OF REAL PROPERTY BY STATE AGENCIES, BOARDS, DEPARTMENTS, COMMISSIONS OR INSTITUTIONS -- APPROVAL OF LEGISLATURE -- EXCEPTIONS. -- A. Any sale, trade or lease for a period exceeding twenty-five years in duration of real property belonging to any agency, board, department, commission or institution of this state, which sale, trade or lease shall be

for a consideration of one hundred thousand dollars (\$ 100,000) or more, shall be subject to the ratification and approval of the state legislature prior to such sale, trade or lease becoming effective. The provision specified in section 6-1-8 New Mexico Statutes Annotated, 1953 Compilation, requiring approval of the state board of finance as a prerequisite to consummating such sales or dispositions of realty shall not be applicable in instances wherein the consideration for such sale, trade or lease shall be for a consideration of one hundred thousand dollars (\$ 100,000) or more and wherein a state agency, board, department, commission or institution not herein specifically excepted is a contracting party, and in every such instance, the legislature shall specify its approval prior to such sale, trade or lease becoming effective.

B. The provisions of this 1961 act shall not be applicable as to those institutions specifically enumerated in Article XII, Section 11 of the state constitution, the state land office or the state highway commission."

Under this section, it is our opinion the duration of the lease and remuneration {*35} may be negotiated by the parties subject to the approval of either the legislature or the State Board of Finance depending upon the amount of money involved.

We would also suggest that any such lease agreement should be submitted to this office for approval prior to being signed by the School officials.