

Opinion No. 66-90

July 19, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Mr. James V. Noble, Assistant Attorney General

TO: Mr. Clay Buchanan, Director, New Mexico Legislative Council, Room 201, State Capitol Building, Santa Fe, New Mexico

QUESTION

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May a state institution of higher education operate a bowling alley which is open to the public even though this may result in its competing with privately owned bowling alleys?

CONCLUSION

Yes, but only if public admittance is incidental to its primary use for the institution.

OPINION

{*121} ANALYSIS

The state educational institutions are those named in Article XII, Section 11 of our Constitution as amended in 1960 (See 1965 Pocket Supplement). Boards of Regents are established for each such institution and control and manage its affairs, Article XII, Sec. 13, New Mexico Constitution. In addition to its other duties, Section 73-29-1 N.M.S.A., 1953 Compilation, authorizes each such Board of Regents to borrow money for the purpose of purchasing, furnishing, erecting, altering, improving, repairing and/or equipping various income-producing facilities including swimming pools, stadiums **or any type of building, improvement** or facility at or for the use of such institution. The section then provides for the imposition and collection of student fees for the use or availability of such facilities or buildings to be considered as income and revenue for the purposes of the act. That section and the following sections authorize the issuance of bonds for such purposes and provides for their payment from net income derived from the operation thereof. The Board of Regents is required to make such charges, **including** the imposition of student fees, for the use of such facilities as are necessary to maintain, operate and repair such facilities, and to pay the principal of and interest on the obligation incurred. They further provide that no additional fee shall be imposed for the use or availability of such facility by the students, faculty, instructors and other employees of such institution.

The language as used in that section necessarily implies that other income may be realized from the operation of the facilities. Such other income would necessarily come

from the public who could, in the discretion of the Board of Regents, also use such facilities.

Opinion No. 5110, dated December 4, 1947, and appearing at page 115, **Report of the Attorney General 1947-48** dealt with the allied question of leasing of school facilities to an outside organization which would hold dances for profit. The opinion held that so long as there was no interference with the proper conduct or management of the school, it might lease buildings for such purposes. The opinion cited 47 Am.Jur. 344, Sec. 67 as authority and that text stated that there is a "liberalizing tendency in favor of extending permissible uses." An examination of this text, as brought up to date, and other texts and authorities disclose that the above statement is still true.

A bowling alley, although not specifically enumerated by Section 73-29-1, supra as one of the revenue-producing facilities which can be constructed and operated by a Board of Regents of an institution of higher education, would be of the same general classification as those named and would fall under the general authorization of such section. Such being the case, a state institution of higher education may operate a bowling alley which is also open to the general public, and without regard to possible competition. However, the primary purpose of the construction and maintenance of such a bowling facility must be to serve the students, faculty, instructors and other employees of such institution and the { *122 } fact that it is also available for the use of the general public must be secondary.