

Opinion No. 67-146

December 20, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. Finlay MacGillivray Manager New Mexico State Fair P.O. Box 8546
Albuquerque, New Mexico

QUESTION

QUESTIONS

1. May the New Mexico State Fair enter into a twenty-five year lease with oil companies to lease two corners of the fairgrounds at Albuquerque, for use as gas stations?
2. Assuming the consideration for each lease will total more than \$ 100,000 must legislative approval be obtained prior to execution of the agreements if the lease term is twenty-five years or less?

CONCLUSIONS

1. Yes, subject to the approval of the State Board of Finance and providing the lease will not interfere with putting on an annual state fair.
2. No.

OPINION

{*235} ANALYSIS

The first of your questions has been answered by Attorney General's Opinion No. 67-58 issued April 10, 1967. In that opinion this office held that the New Mexico State Fair could enter into such leases after a determination that the granting of the lease would not impede the putting on of an annual state fair.

Board of Finance approval for leases and sales of state property has been required by law since 1943. The law is now compiled as Section 6-1-8, N.M.S.A., 1953 Compilation. This section provides that:

"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 [6-1-7.1].

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."

In 1961 the Legislature enacted Section 6-1-8.1, N.M.S.A., 1953 Compilation, thereby substituting the requirements of prior legislative approval for certain state property sales and leases for Board of Finance Approval in those cases. Section 6-1-8.1, supra, provides that:

"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 (25) 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 {*236} 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 [this section] 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."

We are of the opinion that the first sentence of Section 6-1-8.1 supra, clearly requires legislative approval only in cases involving sales, trades and leases of real property where the consideration is for \$ 100,000 or more and then only if the term of the agreement is for more than twenty-five years. Thus, when dealing with a lease of state-

owned realty prior legislative approval is needed only if the lease term exceeds twenty-five years and the consideration for the lease exceeds \$ 100,000.

The second sentence does not specifically set forth leases exceeding twenty-five years and having a consideration of \$ 100,000 as the kind requiring prior legislative approval. However, the second sentence does refer to "such sales or dispositions" in one place and to "such sale, trade or lease" in another.

We are of the opinion that the words "such sales and dispositions" or "such sale, trade or lease" can only refer back to the kinds of sales, trades and leases mentioned in the first sentence of Section 6-1-8.1. It has been held that the word "such" represents the thing as already particularized and is a descriptive and relative word, referring to the last antecedent. **Strawberry Hill Land Corp., v. Starbuck**, 124 Va. 71, 97 S.E. 362.

Therefore, the terms "such sales and dispositions" and "such sale, trade or lease" in the second sentence mean sales, trades, and leases exceeding twenty-five years. It must follow that prior legislative approval is not necessary if the lease does not exceed twenty-five years. However, Board of Finance approval under Section 6-1-8, supra, is still required.

Insofar as Attorney General Opinion No. 64-143 is inconsistent with this opinion it is overruled.

By: Paul J. Lacy

Assistant Attorney General