

## **Opinion No. 69-56**

June 13, 1969

**BY:** OPINION OF JAMES A. MALONEY, Attorney General Mark B. Thompson, III,  
Assistant Attorney General

**TO:** Maralyn S. Budke, Director, Legislative Finance Committee, Legislative-Executive  
Building, Santa Fe, New Mexico

### **QUESTIONS**

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1. Have the required legal procedures been complied with in carrying out the actions necessary to construct the proposed police communications complex? In what respects, if any, have there been deficiencies? What action, if any, could be taken to correct these deficiencies at this time?
2. Does the \$ 2.5 million amount set out in the act constitute the total funds authorized for "constructing, equipping and furnishing" the buildings authorized?
3. Do the provisions of Chapter 16 establish the limit of funds which may be expended for the purposes set out in the act unless the legislature acts to amend its provisions? In other words, may funds from other sources be expended to supplement the amount specified in the act without specific legislative authorization for such expenditures?
4. May the department of radio communications transfer and expend funds appropriated to it to supplement bond funds for construction of a building?
5. Does the state police board and department have adequate authority to dispose of its present headquarters and facilities to the state highway department in the manner proposed?
6. May the state police board and department expend any funds realized from such sale for the purpose outlined above without prior legislative appropriation of the proceeds of the sale to that use? May the state police board and department expend funds realized from the sale for any purpose without prior appropriation by the legislature?

#### CONCLUSION

See analysis.

### **OPINION**

{\*82} FINDINGS OF FACT BY THE LEGISLATIVE FINANCE COMMITTEE.

Chapter 16, Laws of 1968, an Act approved February 14, 1968, is set out in its entirety below:

"AN ACT

RELATING TO SEVERANCE TAX BONDS; PROVIDING FOR ISSUANCE TO FINANCE NEW MEXICO STATE POLICE HEADQUARTERS FACILITIES; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO;

Section 1. SEVERANCE TAX BONDS -- NEW MEXICO STATE POLICE FACILITIES. -  
- The state board of finance shall issue and sell severance tax bonds in compliance with the Severance Tax Bonding Act, in an amount not exceeding two million five hundred thousand dollars (\$ 2,500,000) for constructing, equipping and furnishing New Mexico state police headquarters facilities in Santa Fe when the capitol buildings improvement commission, or its successor agency, upon consultation with the state police board, certifies that the plans and designs are complete. Proceeds from the sale of these bonds shall be disbursed upon vouchers of the capitol buildings improvement commission, or its successor agency. The headquarters facilities shall include an administration building containing a crime laboratory, a district headquarters building, a cafeteria building, a communications and property building, and a police academy building. The police academy building shall include facilities for recruit and in-service training of state police officers and all other state and local law enforcement officers.

Section 2. EMERGENCY. -- It is necessary for the public peace, health and safety that this act take effect immediately."

Chapter 16, laws of 1968, provides that the state board of finance shall issue and sell certain bonds when the property management control division (the successor agency to the capitol buildings improvement commission) "upon consultation with the state police board, certifies that the plans and designs are complete."

{\*83} Pertinent portions of the minutes of the state board of finance meeting held September 10, 1968 and October 11, 1968, relative to the issuance of severance tax bonds recite that the property control division had certified that the plans and designs were complete. An inquiry to the board's financial secretary on June 11, 1969, indicates to the board files contain no written certification that the plans and designs were complete.

On June 11, 1969, the chief, property management control division, department of finance and administration, and Mr. Terence Ross of the architectural firm of Register, Ross and Burnet designing the building, testified before the legislative finance committee that plans for the police complex were, in fact, completed in April 1969 shortly before the project was let to bid on May 8. On May 8, bids for construction were received and opened. The contract was awarded to the John C. Cornell, Inc. firm of

Clovis and the contracts were signed by the property management control division chief and the contractor on May 27, 1969.

Chapter 43, Laws of 1968, provide in pertinent part:

. . . The chief of the property control division shall have the authority to do all acts necessary and proper for the redesigning, major renovation, and remodeling of present state buildings, and the erection of additional state buildings when needed. The chief of the property control division may let contracts for the above purposes made according to established state purchasing office procedures for contracts of the type and amount let. However, all such remodeling, major renovation and construction must first be approved by the board of finance . . .

Approval of the proposed construction is scheduled to be presented to the state board of finance for approval as required above on June 16, 1969.

The state police department proposes to dispose of the buildings, grounds and related facilities presently occupied as its headquarters in Santa Fe through sale of that property to the state highway department. The state police department relies upon its general statutory powers and the authority granted by Senate Joint Resolution No. 10 of the Twenty-Seventh Legislature supporting this sale. The state police department proposed to allocate some \$ 50,000 realized from the sale of this property toward the construction and equipping of new headquarters, state police academy and related buildings authorized in Chapter 16.

The department of radio communications is proposed to be housed in the police complex authorized by Chapter 16, Laws of 1968. The plans and specifications as they relate to the radio communications facilities are considered to be inadequate to the needs of the department. It has been suggested that the communications department transfer funds appropriated to it by the legislature for its operations in the 58th fiscal year and budgeted for rental of space to the "capital outlay" line item to be expended to supplement the bond funds allocated for this purpose in order to revise and expand the presently proposed building.

#### {\*84} ANALYSIS

Laws 1968, Chapter 16, Section 1, (Section 72-18-37.10, N.M.S.A., 1953 Comp., 1968 Supp.), states that the board of finance shall issue and sell severance tax bonds in an amount not exceeding \$ 2,500,000 for constructing, equipping and furnishing the New Mexico State Police headquarters facilities in Santa Fe, when the capitol buildings improvement commission, or its successor agency, upon consultation with the state police board, **certifies** that the plans and designs are complete. The minutes of the board of finance for September 10 and October 11, 1968 reflect that the property control division had certified that the plans and designs of the state police headquarters were complete. The property control division of the department of finance and administration is the successor to the capitol buildings improvement commission. Section 6-2-37,

N.M.S.A., 1953 Comp., 1968 Supp. It would appear therefore that the issuance and sale of the severance tax bonds for the state police headquarters complied with Laws 1968, Chapter 16.

The law creating the power in the state board of finance to issue and sell the severance tax bonds for the state police headquarters recites that the proceeds from the sale of the bonds shall be disbursed upon vouchers of the capitol buildings improvement commission or its successor agency. This act does not appropriate money from the general fund for the building of the state police headquarters but merely authorizes the issuance and sale of the bonds and the disbursement of the proceeds. The law then goes on to recite that the headquarters facility should contain an administration building with a crime laboratory, a district headquarters, a cafeteria building, a communications and property building and a police academy building.

We do not read Laws of 1968, Chapter 16 as directing the executive branch to build only a complex costing \$ 2,500,000.00. The law merely states that that amount will be raised by the sale of severance tax bonds and gives the property control division the power to disburse the proceeds of the sale of the bonds. Unlike a comprehensive enabling statute creating {85} a certain type of headquarters facility and appropriating a certain amount of money for that purpose, the law in question merely provides for a certain method of financing at least \$ 2,500,000 for the project. Therefore, we conclude that the police headquarters facility may be built for an amount in excess of \$ 2,500,000.00 if the legislature appropriates an additional sum or if the sum is available from some other source.

We can find no law wherein the legislature has appropriated an additional sum to be spent on the state police headquarters facilities so we must look to other sources of income. In this regard we determine that there are two other possible sources of funds for the construction of the facilities. The sources are, moneys transferred from the appropriation to the department of radio communications and secondly, moneys received from sale of the present state police facilities in Santa Fe.

Because Laws 1968, Chapter 16 does not specifically include the department of radio communications in the state police headquarters facilities, we must first determine how that department could be involved in such a way as to transfer some of its funds to the construction of the police headquarters facilities. Laws 1968, Chapter 16 merely says that there will be a communications building in the facilities. Two other laws indicate that the legislature must have intended that the department of radio communications establish its facilities at the state police headquarters site. Section 4-26-2, N.M.S.A., 1953 Compilation (1967 Supp.) grants to the radio communications department certain powers over all mobile or fixed radio equipment now owned or subsequently acquired by the state or any officer, agency, department, etc. Further, the legislature by Laws 1968, Chapter 33 authorized the issuance and sale of severance tax bonds for the upgrading of the state policemen radio network and equipping of the state radio communications department. This law gave the radio communications department the authority to certify when there was need for this bond money. We conclude, therefore,

that the radio communications department is an integral part of the state police headquarters facilities.

Laws of 1969, Chapter 282, Section 3 being the general appropriations act for 1969, appropriates to the radio communications department for the 58th fiscal year the sum of \$ 280,000. This appropriation carries no particular line items but is a general appropriation for the general purposes of the department. It is evident, therefore, that if the radio communications department has enough money in this appropriation for the 58th fiscal year beginning July 1, 1969 to enable it to transfer money toward the construction of the communications building in the state police headquarters facilities then the item can be inserted in the budget. The entire radio communications department budget, including an item for part of the construction of the radio communications building would, of course, need the approval of the department of finance and administration and its budget division. Section 11-4-1.8, N.M.S.A., 1953 Comp.

Secondly, we believe that proceeds from the sale of the present state police headquarters in Santa Fe may be applied to the construction of the new state police headquarters facility. The present state headquarters facility has an appraised value in excess of \$ 280,000 and therefore its sale must be approved by the legislature. Section 6-1-8.1, N.M.S.A., 1953 Comp. The approval of a sale of the building was given by the legislature in 1966, by Senate Joint Resolution No. 10 of the Twenty-Seventh New Mexico Legislature. The sale authorized by that resolution involves a trade for land and cash with the State Highway Department as the purchaser from the state police, assuming the option to purchase is exercised by the State Highway Department.

{\*86} Section 6-1-8.1 does not specifically state how proceeds from a sale approved by the legislature are to be distributed. Senate Joint Resolution No. 10 likewise does not cover the distribution of the proceeds of this particular sale. But Section 6-1-8.1 is in effect a specific exception to the power of the board of finance to approve other sales of real or personal property belonging to state agencies. For sales not in excess of \$ 100,000.00, the agency must have the approval of the board of finance. Section 6-1-8A, N.M.S.A., 1953 Compilation. Section 6-1-8B directs that the director of the department of finance and administration has the power to credit payments received from the sale of property to whatever fund of the selling agency he deems appropriate. In the absence of a specific direction by Section 6-1-8.1 and Senate Joint Resolution No. 10, we conclude that the director of the department of finance and administration has the power to credit the money received from a sale of the state police headquarters to whatever fund of the state police he deems appropriate. Therefore, if the director of finance and administration determines that the money received should be credited to a capital outlay fund, specifically for the construction of the state police facility in Santa Fe, he may credit the money to that fund.

Finally, to complete an analysis of the propriety of the entire police headquarters facility matter, we must determine if the division of property control of the department of finance and administration has properly contracted for the construction of the facility. Section 6-

2-29, N.M.S.A., 1953 Comp., (1968 Supp.) states that the chief of the property control division may let contracts for the erection of state buildings when needed. There is a proviso that all such construction must first be approved by the board of finance. Black's Law Dictionary defines "let" to mean the awarding of a contract. Section 6-2-29, is quite explicit in providing that the chief of the property control division may not award any contract that has not been approved by the board of finance. Hence, no act or acts of the chief of the division of property control have any validity so far as creating contractual obligation of the State of New Mexico, until the approval is given by the board of finance. In this case, the board of finance has not yet approved the contract for the construction of the state police headquarters facility and until that is done the awarding is not yet complete.