

Opinion No. 71-107

September 13, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Mr. Robert J. Laughlin Attorney Health & Social Services Department Post Office
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QUESTIONS

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Is the Public Employees Retirement Association building a public building?

CONCLUSION

Yes.

OPINION

{*161} **ANALYSIS**

The Public Employees Retirement Association was created by Chapter 167, Laws of 1947 to provide a retirement fund for aged or incapacitated employees of the State of New Mexico, its political subdivisions and municipalities and to provide for the financing and administration of such fund. The State Treasurer, State Auditor and Attorney General were designated by such legislation to perform various functions for the public Employees Retirement Association.

None of the laws of the State of New Mexico relating to insurance or {*162} insurance companies or banking institutions apply to the Retirement Association. None of its moneys, annuities or other benefits mentioned in the act are subject to execution, levy, attachment, garnishment or other legal processes nor are they subject to state income tax.

Chapter 210, Laws of 1965 provided that the Public Employees Retirement Association was authorized to purchase land adjacent to the Capitol complex and build thereon a building to house the Public Employees Retirement Association as well as lease any additional space available to any public agency or private person with priority for rental space going to public agencies.

A participation agreement was entered into between the Capitol Buildings Improvement Commission of the State of New Mexico and the Public Employees Retirement Association for the purchase of certain property for the location of the P.E.R.A. building. The Capitol Buildings Improvement Commission has an option to purchase the property

at any time upon payment to P.E.R.A. of an amount equal to the net calculated cost of the property plus a return of four percent per annum on such net calculated cost. The State has not exercised that option.

Public Employees Retirement Association employees' salaries are paid by the Department of Finance and Administration out of a budget approved in the General Appropriation Act. Services are provided the Association by other state agencies by direction of the Legislature. Obviously, the Legislature intended the P.E.R.A. to be a public entity, for if it were other than a public entity, under Article IV, Section 26 of the Constitution, the State would be prohibited from granting any corporation, person, etc., any rights, franchise, privileges or exemptions which are not available equally to all persons or corporations in the State. Further, the legislation creating the Public Employees Retirement Association limited membership to employees of state, county, city or municipal entities, **including the staff employees of** the P.E.R.A. itself. It would appear by definition under state law that since the employees of the Association are "public employees," the employer is a public entity.

It is, therefore, the opinion of this office that the Public Employees Retirement Association building is a "public" building. However, it is a trust investment of the Public Employees Retirement Association.

By: Jay F. Rosenthal

Assistant Attorney General