

Opinion No. 70-83

October 26, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: Old Lincoln County Memorial Commission Mrs. Dessie Sawyer, Chairman c/o Michael L. Keleher Keleher & McLeod Public Service Building Albuquerque, N.M. 87103

QUESTIONS

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May the Old Lincoln County Memorial Commission expend appropriated funds for purposes of advertising its facilities?

CONCLUSION

Yes.

OPINION

{*142} ANALYSIS

The Old Lincoln County Memorial Commission was established by Chapter 138, Laws of 1949 (§ 4-12-23, N.M.S.A., 1953 Compilation), in order to protect, preserve, maintain and operate the Old Lincoln County Courthouse monument as a memorial and state museum. Section 4-12-27, N.M.S.A., 1953 Compilation. The authority thus granted the Old Lincoln County Memorial Commission to operate the state museum is of a broad nature. When such power is conferred by statute, everything necessary to carry out the power and make it effectual and complete will be implied. **Kennecott Copper Corp. v. Employment Security Comm'n**, 78 N.M. 398, 432 P.2d 109 (1967); **Reese v. Dempsey**, 48 N.M. 417, 152 P.2d 159 (1944).

Other evidence of the Legislature's intent to grant broad powers to the Commission is found in Section 4-12-30, N.M.S.A., 1953 Compilation, in which appropriations are specified. This section, while repeating the previously-mentioned purposes of "operating" and "maintaining" the memorial, also states that funds appropriated shall be "for such other purposes as the Old Lincoln County Memorial Commission shall determine." This language clearly authorizes the Commission to expend its appropriations in whatever manner it deems advisable in protecting, preserving, maintaining and operating the memorial and museum.

From these provisions, it may be concluded that appropriated funds may be expended by the Old Lincoln County Commission for purposes of advertising the memorial and state museum.

Attorney General Opinion No. 65-64, issued April 19, 1965, considers whether municipal funds may be expended directly through a municipal commission in promoting the location of private industrial enterprises in or near the municipality. The Opinion states that "under the proper procedures and within legal limitations, municipal funds may be expended for advertising the municipality's industrial prospects." Further, the "legal limitations" imposed by the 1965 Municipal {*143} Code were determined not prohibitive where a municipality desired to expend public funds to retain a public relations firm for the purpose of advertising. See Attorney General Opinion No. 65-168, issued August 30, 1965.

Both of the above opinions clearly allow advertising through means of public funds within the legislative framework.

Attorney General Opinion No. 58-216, decided October 30, 1958, concluded that the Game and Fish Department did not have the right to spend funds for out-of-state travel by department personnel for purposes of advertising New Mexico's game and fish resources. The reason for this conclusion was that the statutory purpose of the Department was only "aiding the propagation and protection of game and fish and to establish conservation regulations . . ." These stated purposes would not have been furthered by advertising and therefore the use of appropriated funds for such a program was not permissible.

It is, of course, a fundamental principle of administrative law that the authority of the agency is not limited to those powers expressly granted by statute, but includes, also, all powers that may fairly be implied therefrom. **Winston v. New Mexico State Police Bd.**, 80 N.M. 310, 454 P.2d 967 (1969). We conclude, therefore, that the commission may expend funds for advertising in order to implement the stated purposes for which the commission was established, if such power may fairly be implied therefrom.

In the present case, the Old Lincoln County Memorial Commission is to maintain and operate the monument as a memorial and state museum. This duty, coupled with the power and authority to make rules and regulations as may be deemed necessary for the proper operation and maintenance of the monument and museum, Section 4-12-29, N.M.S.A., 1953 Compilation, permits the Old Lincoln County Memorial Commission to expend appropriated funds for purposes of advertising its memorial and state museum.

By: Leila Andrews

Assistant Attorney General