

Opinion No. 71-62

April 28, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Mr. Terence W. Ross Chairman, Joint Executive Committee Colorado and New Mexico Railroad Authorities 111 Barcelona Lane Santa Fe, N.M. 87501

QUESTIONS

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Are there statutory restrictions or requirements applicable to the New Mexico Railroad Authority upon their entering into the following transactions:

- A. a lease (for a period not exceeding twenty years) or sale to a private party of real and personal property belonging to the New Mexico Railroad Authority;
- B. a grant to a private party of a right of first refusal, to last no longer than one year, on all proposals submitted by third parties which concern the sale or lease of real or personal property belonging to the New Mexico Railroad Authority;
- C. a contract with the lessee of such property to actually operate the railroad and maintain or rehabilitate the Authority's premises?

CONCLUSIONS

- A. Only those contained in the Railroad Authority Act and, where applicable, the provisions of Section 6-1-8.1, NMSA, 1953 Comp.
- B. Only those contained in the Railroad Authority Act.
- C. Only those contained in the Railroad Authority Act.

OPINION

{*90} ANALYSIS

The Railroad Authority Act, Sections 69-11-1, **et seq.**, NMSA, 1953 Comp. (1969 P.S.) is quite comprehensive, and Section 69-11-7 thereof setting forth the powers and duties of the New Mexico Railroad Authority is complete within itself. It provides in pertinent part as follows:

"The authority has all powers necessary to carry out the purposes of the Railroad Authority Act, and it may, **not by way of limitation:**

C. plan, establish, acquire, purchase, develop, construct, enlarge, improve, maintain, equip, operate, protect and police a state-owned railroad system; **lease and sell real or personal property**, supplies, goods, materials and commodities; and furnish and supply services and utilities **incident to the operation of a railroad system**, including the granting of franchises and concessions and the operation of recreational facilities incident to the operation of a railroad system for recreational purposes.

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E. **enter into contracts, leases or other arrangements with any person for terms not exceeding twenty years, granting the privilege of operating the railroad system**, with or without the operation or management of any related recreational facilities, **on such terms and conditions as the authority deems proper**; * * *"
(Emphasis added)

Many state agencies have no **specific** authority to sell or lease real or personal property. In order to fill this vacuum the legislature granted the power to sell or otherwise dispose of real or personal property to "any department, commission, agency or institutional board of this state, or local public school district . . . subject to approval of the state board of finance." Section 6-1-8, NMSA, 1953 Comp. This statute is actually permissive legislation. It granted a disposal power to those agencies who previously had no such authority. Where, however, an agency is **specifically** granted the power to sell or lease real or personal property, as is the case here, Section 6-1-8, **supra**, is not applicable. See Attorney General Opinions 61-123 and 65-139. To hold otherwise would render portions of Section 69-11-7, **supra**, superfluous. No such intention should be attributed to the legislature, **Fisher v. San Juan County Bd. of Educ.**, 30 N.M. 454, 236 P. 743; **Midwest Video v. Campbell**, 80 N.M. 116, 452 P.2d 185, particularly when we here have a specific, as opposed to a general, statute. **State v. Lujan**, 76 N.M. 111, 412 P.2d 405; **Martinez v. Cox**, 75 N.M. 417, 405 P.2d 659.

We have a somewhat different situation in the case of Section 6-1-8.1, NMSA, 1953 Comp. This is the 1961 enactment that requires approval by the legislature for the sale, lease or trade of **real** property when the consideration is for \$ 100,000 or more. It can be argued that this statute is a general law and that Section 69-11-7, **supra**, being a special law as well as later in time controls to the extent of any conflict. But unlike Section 6-1-8, **supra**, Section 6-1-8.1, **supra**, is not permissive; it is restrictive in nature. Any lease for a period in excess of twenty-five years, any sale or any trade of **real** property wherein any agency, board, department, commission or institution "not herein [in § 6-1-8.1] **specifically excepted** in a contracting party, . . . **in every such instance**, the legislature shall specify its approval **prior** to such trade or lease becoming effective." (Emphasis added) The only specific exceptions are the state educational institutions enumerated in Article XII, Section 11 of the State Constitution, the State Land Office and the State Highway Commission.

It is quite true that at the time Section 6-1-8.1, **supra**, was enacted there was no New Mexico Railroad Authority, or, for that matter, a number of now extant boards,

commissions, etc. But the entire tenor of Section 6-1-8.1, **supra**, is quite different from that of Section 6-1-8, **supra**. The legislature intended, and clearly said so, that the only exceptions would be those contained within Section 6-1-8.1, **supra**.

All rules of statutory construction are merely aids in arriving at true legislative intention. **State v. Shop Rite {91} Foods, Inc.**, 74 N.M. 55, 390 P.2d 437; **Bradbury & Stamm Const. Co. v. Bureau of Revenue**, 70 N.M. 226, 372 P.2d 808. In this particular case we do not feel justified in relying on a general law -- special law distinction nor on the later in time enactment criterion. If a sale or lease by the Railroad Authority is of a type covered by Section 6-1-8.1, **supra**, that statute is applicable.

Basically question 1(B) is answered by what has been said above. The Railroad Authority does have the statutory power to grant a private party the right of first refusal under Section 69-11-7, **supra**.

In answer to question 1(C), a contract requiring the lessee to operate the railroad and renovate and maintain the leased premises is certainly a proper and permissible agreement under Section 69-11-7, **supra**. Subsections B and C of that statute give the Railroad Authority the power to improve and maintain the railroad system or to contract for these necessary services -- Subsection E empowers the Railroad Authority to enter into a contract for the operation of the railroad. The lease and/or contract for the operation of the railroad system is exempt from the requirements of the Public Purchases Act. Section 6-5-34 (D) of that Act exempts "leases of real property", while subsection B exempts "contracts with persons, partnerships, corporations or associations for technical or professional services." This section also provides that "the central purchasing agent [in this case the State Purchasing Agent] shall prescribe by rule or regulation what are technical or professional services." This has been done. State Purchasing Agent Procurement Directive No. 7, effective June 10, 1970, state that "Technical services are those having to do with the particular industrial or mechanical arts of the applied sciences. They must be specialized and involved a specialized skill." Certainly a railroad operation requires these skills. Any other conclusion would be "a hell of a way to run a railroad."

By: Oliver E. Payne

Deputy Attorney General