

Opinion No. 73-20

February 13, 1973

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Malcolm N. Garrett, Member Board of Regents New Mexico State University Route 2 Clovis, New Mexico 88101

QUESTIONS

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1. Is New Mexico Constitution, Article XV, § 1, pertaining to the department of agriculture, self-executing?
2. Does the legislature have the power to prescribe the form of organization and the duties of the department of agriculture, in view of the provision in New Mexico Constitution, Article XV, § 1, that it "shall be under the control of the board of regents" of New Mexico State University?

CONCLUSION

1. No.
2. Yes.

OPINION

{*34} ANALYSIS

The constitutional provision to be construed reads:

"There shall be a department of agriculture which shall be under the control of the board of regents of the College of Agriculture and Mechanic Arts [renamed New Mexico State University by constitutional amendment adopted November 8, 1960]; and the legislature shall provide lands and funds necessary for experimental farming and demonstrating by said department." New Mexico Constitution, Article XV, § 1.

In determining whether this constitutional provision is self-executing, we need first to define "control," since it is the key word in the grant of power to the NMSU board of regents.

"Control" has an obvious meaning; Webster defines it primarily in terms of itself:

"The act or fact of controlling; power or authority to control; directing or sustaining domination; as, under parental control." Webster's New International Dictionary, unabridged, 2nd ed., 1955.

By vesting the control of the department of agriculture in the NMSU board of regents, the framers of the constitution left the legislature with broad authority to prescribe the form of organization and the duties and powers of that department. Since the constitution did not specify any organizational framework for the department of agriculture and only hinted at its functions, it is obvious that Article XV § 1, is not self-executing.

How has the legislature utilized its powers in this field? First, in 1919, it enacted § 73-26-8, NMSA, 1953 Comp., which, without mentioning the department of agriculture, granted the board of regents the

". . . supervision of the administration and enforcement of all laws of this state, relating to agriculture, agricultural projects, horticulture, feeds and feed stuffs, insect pests, plant diseases and such subjects pertaining to agriculture and horticulture as the legislature shall hereafter provide, and **shall have power to delegate inspectors and agents to assist in the enforcement of such laws.**" (Emphasis supplied)

Numerous statutes have been enacted in these areas, and, we are informed, the supervisory, administrative and enforcement functions concerning them are performed by a "department of agriculture" created by the board of regents, with a director and other employees selected by the board. The legislature's long acquiescence in this arrangement, coupled with its periodic appropriation of funds to NMSU for these purposes, lends credence to an argument that it is in accord with legislative intent. However, it does not follow that this apparent delegation of legislative power leaves the legislature without power to prescribe the form of organization and duties of the department of agriculture established by the constitution, so long as its **control** remains with the NMSU board of regents.

The legislature in fact has enacted at least three statutes mentioning the department of agriculture with two of them imposing duties on its director, although it has never specifically created such an office. In 1959 it enacted § 76-1-31, NMSA, 1953 Comp., which created the office of state superintendent of weights and measures, designated the board of regents of NMSU to be the superintendent of weights and measures, and provided that ". . . the director of the state department of agriculture shall be the deputy superintendent of weights and measures . . ."

In 1961 the legislature enacted § 73-26-9.1, which provides:

"The board of regents of the New Mexico State University, **as the department of agriculture**, is authorized to enter into a contract or contracts, agreement or agreements with the United States, the state of New Mexico or agencies of either of them, corporations, foundations and private persons to receive, accept and administer

funds {*35} or other assets upon such terms and conditions and for such purposes, as the board of regents shall find appropriate." (Emphasis supplied)

And in 1965 the legislature enacted the Cotton District Act §§ 45-24-1 through 45-24-9, NMSA, 1953 Comp., which, in § 45-24-3, defined the director of that act as being the director of the state department of agriculture, and, in § 45-24-4, set forth the duties he should perform "under supervision and control of the board of regents of New Mexico State University."

Thus it appears that there is a **de facto** department of agriculture, and a director thereof, despite the legislature's failure to take direct action to establish same. In fact, § 73-26-9.1, **supra**, seems to recognize that the NMSU board of regents itself is the department of agriculture.

It should be mentioned that the two constitutional functions of "experimental farming and demonstrating by said department" of agriculture, for which the legislature is directed to provide lands and appropriate funds, are performed by the NMSU **college** of agriculture and not by the **department** of agriculture, which are separate and distinct organizations, all controlled, however, by the board of regents.

The powers of the legislature are derived from Article IV of the constitution, § 1 of which provides that, subject to referendum powers reserved to the people,

"The legislative power shall be vested in a senate and house of representatives which shall be designated the legislature of the state of New Mexico . . ."

And § 2 of Article IV provides in part:

"In addition to the powers herein enumerated, the legislature shall have all powers necessary to the legislature of a free state, including the power to enact reasonable and appropriate laws to guarantee the continuity and effective operation of state and local government . . ."

Under this grant of powers, the legislature has enacted numerous laws pertaining to the organization and operation of its co-equal branches of government, the executive and judicial, and we can conceive of no logical basis for saying it could not do likewise with the department of agriculture so long as the **control** is left with the NMSU board of regents, as previously stated.

By: Dee C. Blythe

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