

Opinion No. 74-26

August 13, 1974

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Mr. David Bloom, Chief State Budget Division Department of Finance and Administration 430 State Capitol Santa Fe, New Mexico 87501

QUESTIONS

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1. Was the responsibility for selling land at the Girls' Welfare Home as authorized by Laws 1972, Chapter 74, Section 7, vested in the Chief of the Property Control Division or the Corrections Commission?
2. Can the sale of such land be consummated at the present time or does authorization have to be granted by future legislative action?

CONCLUSIONS

1. Chief of the Property Control Division.
2. Future legislative authorization is necessary.

OPINION

{*51} ANALYSIS

Assuming for the purposes of question one that Section 7, Chapter 74, Laws 1972 is still valid time wise, we will make certain observations that may be helpful as guidelines in the future.

Section 7, Chapter 74, Laws 1972 provides as follows in its entirety:

"Section 7. AUTHORIZATION OF LAND SALE. -- The sale of part of the land held by the department of corrections and occupied by the girls welfare home is hereby approved."

Presumably the "part" to be sold was to be for a consideration of \$ 100,000 or more; otherwise legislative approval under Section 6-1-8.1, NMSA, 1953 Comp. would not have been necessary.

The Corrections Act, Sections 42-9-1 through 42-9-11, NMSA, 1953 Comp. does not grant to the Department of Corrections the power to sell real property which it holds. Nor

does Section 7, Chapter 74, Laws 1972 spell out which governmental unit is to consummate the sale. On the other hand, Section 6-2-26 A, NMSA, 1953 Comp. dealing with the Property Control Division of the Department of Finance and Administration provides as follows:

[The chief of the property control division shall]

"A. have control over all state buildings and **lands** except those under the control and management of the state highway department; the state fair commission; state institutions of higher learning; the New Mexico School for the Deaf; the New Mexico School for the Visually Handicapped; the Supreme Court; the commissioner of public lands; the state armory board, in accordance with section 9-7-2 NMSA 1953; the building in which the legislature is housed, the adjacent utilities plant and the surrounding grounds; museum of New Mexico; and the state library building and adjacent grounds. The chief shall assign the use or occupancy of state buildings and lands under his control to the state agency or political subdivision which may make the best and highest beneficial use of the property;" (Emphasis added)

Paragraph J of the same section provides that [The chief of the property control division shall] "have the power to sell state buildings and **real property** under his control in accordance with sections 6-1-8 and 6-1-8.1 NMSA 1953. Any such sale shall be by quitclaim deed." Thus the Chief of Division of Property Control would actually make the sale and the moneys received would be credited to the Corrections Department. See Opinion of the Attorney General No. 69-56.

Actually, however, the answer to your second question is dispositive of this matter. Our considered opinion is that Section 7, Chapter 74, Laws 1972 is invalid for three reasons -- but our conclusion is really based on number three listed below.

(1) What "part" of the land is to be sold? There must have been some plan in order for the Department of Corrections to know the consideration would be \$ 100,000 or more. Nonetheless, the implementing legislation, Section 7 **supra**, does not specify the "part" which {*52} is to be sold. This, it seems to us, is an example of statutory uncertainty -- void for vagueness if you will. As the Supreme Court held in **Safeway Stores v. Vigil**, 40 N.M. 190, 57 P.2d 287 when language of an act appears on its face to have a meaning, but it is impossible to give it any precise or intelligible application in the circumstances under which it was intended to operate, the act is simply void. See also **State ex rel. Bliss v. Dority**, 55 N.M. 12, 225 P.2d 1007; **State ex rel. Salazar v. Humble Oil & Refining Co.**, 55 N.M. 395, 234 P.2d 339; **Beatty v. City of Santa Fe**, 57 N.M. 759, 263, P.2d 697; **Silver City Consolidated School District No. 1 v. Board of Regents of New Mexico Western College**, 75 N.M. 106, 401 P.2d 95.

(2) A provision in an act entirely outside the scope of the title is void. **State v. Candelaria**, 28 N.M. 573, 215 P. 816. There is nothing in the title of Laws 1972, Chapter 74, Section 7 that puts **anyone** on notice that this section allowed the sale of any state land held by an agency, department or commission. See Article IV, Section

16, New Mexico Constitution; **Fischer v. Rakagis**, 59 N.M. 463, 286 P.2d 312; **Fowler v. Corlett**, 56 N.M. 430 244 P.2d 1122; **Croswait v. White**, 55 N.M. 71, 226 P.2d 477; **Romero v. Tilton**, 78 N.M. 696, 437 P.2d 157.

(3) There exists yet another and compelling reason why Section 7, Chapter 74, Laws 1972 is no longer effective -- if in fact it ever was. The designation by the New Mexico Compilation Commission of Section 7, Chapter 74, Laws 1972 in the Parallel Tables, Volume 12, Part 3, p. 94, NMSA, 1953 Comp. (P.S.) as "temporary" must be given some significance even though "temporary" is not defined. The fact is that the New Mexico Compilation Commission did not ascribe a statutory section citation number to Section 7, Chapter 74, Laws 1972.

The reasoning of the Compilation Commission certainly appears to be valid. That the legislature contemplated the authorization to sell the land would be utilized forthwith is indicated by two factors. Chapter 74, Laws 1972 contained an emergency clause making the legislation effective on February 29, 1972. In addition, there is every reason to believe that the legislature intended the sale to be consummated during fiscal year 1972-73. This becomes readily apparent when we examine Section 4, Subsection H of the General Appropriation Act of 1972 which stated:

"The director of the department of finance and administration may authorize a loan of funds from the operating reserve fund to the corrections commission **in anticipation of funds to be received from the sale of land authorized by the Thirtieth Legislature, Second Session**. The loan shall not exceed the appraised value of the land and shall be used only to match federal funds for the construction of a new girls' welfare home facility." (Emphasis added)

Since provisions such as this contained in General Appropriation Acts cannot continue to have force and effect after the end of the appropriation period without violating Article IV, Section 16, New Mexico Constitution (**State v. State Board of Finance**, 59 N.M. 121, 279 P.2d 1042), this fact further reinforces our conclusion that the legislature's intention or at least expectation was for the land to be sold during fiscal year 1972-73 (or perhaps even earlier since the sale authorization contained an emergency clause).

In conclusion then, if the sale authorization was ever valid, that validity has long since been dissipated. Accordingly fresh authorization to sell a portion of the land in question needs to be obtained from the legislature if the consideration is to be \$ 100,000 or more. Such authorization must spell out the portion of the land to be sold and which governmental unit is to sell it if the sale is to be made by someone other than the Chief of Division of Property Control.

By: Oliver E. Payne

Deputy Attorney General