

Opinion No. 75-42

July 31, 1975

BY: OPINION OF TONEY ANAYA, Attorney General

TO: Fred Muniz, Chief State Budget Division Department of Finance and Administration
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QUESTIONS

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1. Can the administration of the Services for the Blind, Albuquerque Training Center by the Vocational Rehabilitation Division be construed to mean that the Center is a public agency?
2. Is the Training Center subject to the Public Purchases Act?
3. Is the Training Center subject to the Personnel Act?

CONCLUSIONS

1. No.
2. See Analysis.
3. See Analysis.

OPINION

{*118} ANALYSIS

The New Mexico Department of Education, Vocational Rehabilitation Division, Services for the Blind Section, operates the Services for the Blind, Albuquerque Training Center as a vocational rehabilitation program. The program **supervisors** are Department of Education employees who manage the program, and some of the program overhead is paid from State funds. However, the program is run as a competitive business. Visually handicapped persons provide the labor for the program which is aimed at their vocational rehabilitation, and the program operates by contracting for the manufacture of goods and the selling of manufactured goods. The Services for the Blind, Albuquerque Training Center Program is competing with private industry and must operate on a profit and loss basis. From sales, it replenishes its raw materials and pays workers' salaries plus most of the overhead.

The Training Center was not specifically created by legislation. It was established by the New Mexico School for the Blind [New Mexico School for the Visually Handicapped] pursuant to Section 73-23-1 NMSA 1953 (Repealed) which then provided:

"The New Mexico School for the Blind [New Mexico School for the Visually Handicapped] is intended and meant for the proper instruction of the blind youth of the state, and for the purpose of training, educating, rehabilitating, and employing blind persons over the age of eighteen (18) years in co-operation and after certification as to eligibility by the Department of Public Welfare, or any other federal or state agency, and for the furtherance of such purpose {**119*} to acquire land by purchase, gift or otherwise."

In order to consolidate certain vocational programs, the Training Center was transferred to the Vocational Rehabilitation Division of the Department of Education by Laws of 1971, Chapter 324, Section 5:

"There is transferred to the services for the blind administrative unit of the vocational rehabilitation division of the department of education those powers, fiscal responsibilities, duties, records, equipment and personnel of the New Mexico school for the visually handicapped pertaining to the training, rehabilitating and employing of blind persons over the age of 18 years in cooperation with any other federal or state agency."

Thus, the Training Center became one of the programs administered by the department of education and is analogous to other school programs. It does not have the status of a public office or state agency because the legislature, under Section 73-23-1, **supra**, as quoted above, obviously did not intend to create separate agencies out of educational programs for the visually handicapped. Such an intent would have to be specifically expressed. In order to establish a public office or agency, it would be necessary for the Constitution or statutes to create it as such, to delegate to it some portion of the sovereign power of the State, to invest it with some permanence and continuity and to grant it powers and duties. **State v. Quinn**, 35 N.M. 62, 290 P. 786 (1930).

With respect to the Public Purchases Act, Sections 6-5-17 to 6-5-35 NMSA 1953, the Training Center is neither a "state agency" nor a "local public body" as defined by Subsections 6-5-18(A) and (B), **supra**, and hence is not subject to the requirements of the Act. The department of education is, however, a state agency and all budget expenditures from appropriations by the Services for the Blind Unit of the Vocational Rehabilitation Division which are used for maintenance, supplies and capital outlay at the Training Center would be subject to the Act.

The visually handicapped clients being trained at the Training Center and paid salaries from proceeds of product sales are much like school students as a result of the legislative intent outlined above, and they are not employees subject to the Personnel Act under Subsections 5-4-30(I) and (J), NMSA 1953. On the other hand, the administrative and supervisory personnel whose salaries are paid by the Department of Education are subject to the Personnel Act.

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