

Opinion No. 78-21

October 23, 1978

OPINION OF: Toney Anaya, Attorney General

BY: Jill Z. Cooper, Director, Civil Division

TO: Mr. Paul R. Onuska, District Attorney, Eleventh Judicial District, McKinley County Courthouse, Gallup, New Mexico 87301

STATE BOARD OF FINANCE; COUNTIES; MUNICIPALITIES

Section 6-1-8, N.M.S.A. does not require that counties and municipalities obtain approval from State Board of Finance before disposing of property.

QUESTIONS

Are municipalities and counties required to obtain approval of the state board of finance before selling or otherwise disposing of real or personal property not needed for a public purpose?

CONCLUSIONS

No.

ANALYSIS

Section 6-1-8, N.M.S.A. 1953 Comp., states:

"Sale of Property by State Agencies or Local Public Bodies--Approval of Board of Finance--Exception--

A. Any department, commission, agency or institutional board of this state, or local public school district is empowered to sell or otherwise dispose of real or personal property belonging to such state department, commission, agency, institution or local public school district, subject to approval of the state board of finance; provided, however, the governing authority of each state agency and local public body, as defined by Section 11-2-63 NMSA 1953 may dispose of items of personal property having a current resale value of fifty dollars (\$50.00) or less, belonging to such agency or body without necessity of prior approval of the state board of finance, wherein the governing authority of the state agency or local public body has affirmatively complied with the provisions of Section 6-1-7.1 NMSA 1953."

OPINION

The use of the general phrase "local public body," in the title of the statute and in the proviso to subsection A, could suggest that the procedures defined by the statute were intended to apply to all local public bodies and hence to cities and counties. Moreover, the proviso adopts the definition of local public bodies set out in Section 11-2-63, N.M.S.A. 1953, which states:

"Definitions. . . . 'Local public body' means every political subdivision of the state of New Mexico which expends public money from whatever source derived, including but not limited to counties, county institution, boards, bureau or commissions; incorporated cities, towns or villages; . . ."

However, the main point of Section 6-1-8(A), **supra**, is to grant power to dispose of real or personal property, subject to state board of finance approval, to state entities and local public school districts. "Local public bodies" are not included in that grant of power. This inconsistency results in an unfortunate ambiguity with respect to the scope of application of the statute.

A similar problem was considered in Opinion of the Attorney General No. 71-62, dated April 28, 1978, which dealt in part with the question of the applicability of Section 6-1-8(A), **supra**, to the New Mexico Railroad Authority. In that opinion this office stated that Section 6-1-8, **supra**, "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." The opinion further explains that to conclude otherwise would render statutes granting the authority to sell or lease real or personal property superfluous. Such a construction of a statute is not favored. **Stang v. Hertz Corp.**, 81 N.M. 69, 463 P.2d 45 (Ct. App. 1969); **affirmed** 81 N.M. 348, 467 P.2d 14; **appeal after remand**, 83 N.M. 217, 490 P.2d 475; **reversed** 83 N.M. 730, 497 P.2d 732; 52 A.L.R.3d 112.

Municipalities are empowered by statute to sell or otherwise dispose of real property. Section 14-55-2, N.M.S.A. 1953 Comp., specifically provides that

"A. A municipality may sell real or personal property not essential for a municipal purpose for cash at public or private sale without notice where it is shown to the governing body that such property does not exceed the value of five hundred dollars (\$500).

B. A municipality may sell real or personal property having a value of more than five hundred dollars (\$500) which is not essential for a municipal purpose, at public or private sale after giving notice of such sale to be published once each for two [2] consecutive weeks prior to sale upon such terms and conditions as imposed by the governing body.

C. The bid of the highest responsible bidder shall be accepted unless the terms of the bid do not meet the published terms and conditions of the municipality, then the highest

bid which does meet the published term and conditions shall be accepted; Provided, however, a municipality may reject all bids.

D. A municipality may sell, at private or public sale, exchange or donate real or personal property to the state, to any of its political subdivisions and to the federal government if such sale, exchange or gift is in the best interests of the public, and is approved by the state board of finance."

Under the reasoning set out in Opinion of the Attorney General No. 71-62, this grant of power would leave municipalities outside the scope of Section 6-1-8, **supra**. That section and the requirement of board of finance approval contained in that section do not apply to entities which are otherwise empowered by statute to sell or dispose of property.

Moreover, we would note that Subsection (D) of Section 14-55-2, **supra**, expressly requires board of finance approval of sales of property to governmental entities. Under the rule of **expressio unius est exclusio alterius**, it would appear that board of finance approval is not, therefore, required for other sales of municipal property as provided by subsections A, B, or C of Section 14-55-2. See **In re Attorney General**, 2 N.M. 49 (1881).

Similarly, counties are granted by statute the authority to sell or otherwise dispose of real property. See Sections 15-46-2 and 15-46-3, N.M.S.A. 1953 Comp. In addition, counties are generally granted all the powers granted to municipalities. Section 15-36A-1, N.M.S.A. 1953 Comp. Accordingly, Section 14-55-2, **supra**, would apply to counties as well as to municipalities. As counties are otherwise empowered to sell property, they need not derive that power from Section 6-1-8, **supra**, and thus they are not subject to the requirement of that section that they obtain board of finance approval.

Finally, we would not that, given the ambiguity inherent in Section 6-1-8(A), **supra**, we may resort to rules of statutory construction to determine legislative intent. **State v. Elliott**, 89 N.M. 756, 557 P.2d 1105 (1977). It is a well-settled rule that as between general and specific statutes, conflicts will be resolved by giving effect to the specific statute. **New Mexico Bureau of Revenue v. Western Electric Co.**, 89 N.M. 468, 553 P.2d 1275 (1976). Section 6-1-8, **supra**, is a general statute governing the sale of property by public entities while Section 14-55-2, **supra** is a specific statute governing the sale of property by municipalities. The latter does not require approval by the board of finance (except as provided in subsection (D)) and controls.

In sum, we conclude that municipalities and counties do not, unless otherwise provided by law, need approval by the state board of finance for the sale or property.

ATTORNEY GENERAL

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