

## Opinion No. 80-05

February 12, 1980

**OPINION OF:** Jeff Bingaman, Attorney General

**BY:** John F. Kennedy, Assistant Attorney General

**TO:** Honorable David W. King, Secretary, Department of Finance and Administration,  
421 State Capitol, Santa Fe, New Mexico 87503

### PUBLIC BUILDINGS AND PROPERTY

The authority of the public school capital outlay council to dispose of property would permit the council to make a gratis transfer of state-owned portable buildings to school districts.

### QUESTIONS

May the Public School Capital Outlay Council dispose of state-owned portables, as specified in Subsection C of Section 22-24-4 NMSA 1978, **via** a permanent **gratis** transfer of title and ownership to public school districts now using them?

### CONCLUSIONS

Yes.

### ANALYSIS

The pertinent language from Section 22-24-4 NMSA 1978 states:

". . . The [public school capital outlay] council may authorize the permanent disposition of the property by the property control division with prior approval of the state board of finance . . ."

### OPINION

The term "disposition" is not limited in the law to sale for consideration, and has been defined as "the parting with, alienation of, or giving up property." Black's Law Dictionary page 558 (4th ed. 1951). It is a relinquishment of property. **Woodsam Associates, Inc. v. Comm'r of Internal Revenue**, 198 F.2d 357, 359 (2nd Cir. 1952). Thus, the discretion of the council to authorize the disposal of portable classrooms purchased by the Public School Capital Outlay Fund is not limited to sale for consideration or exchange. Nor is any donation involved which would violate Article IX, Section 14 of the New Mexico Constitution since the prohibition there does not apply as between the

state and one of its subordinate agencies. **City of Gallup v. New Mexico State Parks and Recreation Comm.**, 86 N.M. 745, 527 P.2d 786 (1974).

The only conditions upon authorizing such a **gratis** transfer of portable classrooms to local school boards are, first, the prior approval of the State Board of Finance, as required by the above-quoted language of Section 22-24-4, **supra**, as well as by Section 13-6-2 NMSA 1978 if the current resale value exceeds \$500.00. Second, the Secretary of the Department of Finance and Administration or the Board of Finance are empowered by Section 13-6-2(C) NMSA 1978 to condition the disposition upon the property being offered for sale to state agencies or local public bodies. This provision gives the secretary or the board veto power over any **gratis** transfer, which could be exercised by requiring the council first to put the property up for sale to another state agency or local public body.

### **ATTORNEY GENERAL**

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