

October 20, 2015 -- Advisory Letter -- Opinion Request --Northern New Mexico College

The Honorable Richard C. Martinez
New Mexico State Senator
P.O. Box 762
Española, New Mexico 87532

Re: Opinion Request --Northern New Mexico College

Dear Senator Martinez:

You requested our advice regarding whether the New Mexico Constitution requires Northern New Mexico College (“NNMC”) to provide a minimal level of activity, programming and/or courses on the El Rito Campus.” As discussed below, our review of the New Mexico Constitution, the Enabling Act, statutes, and case law authorities leads us to conclude that, as a constitutional state educational institution, NNMC is not prohibited from moving the majority of its coursework from the El Rito campus so long as the school’s trust lands and their proceeds are used for the purpose of maintaining NNMC as a state educational institution.

Article XII, Section 11 of the New Mexico Constitution confirms NNMC, among others, as a state educational institution and describes its location as “El Rito.” According to your request, NNMC plans to relocate all of its academic coursework to the Española campus in an effort to centralize NNMC’s resources. The request states that you have been “assured by [NNMC]’s administration that the El Rito campus will remain open to conferences, academic retreats, public gatherings and as a host site for research expeditions.”

The 1910 Enabling Act was an act signed by the U.S. Congress that “provided for New Mexico’s admission as a state into the federal union and set forth certain basic conditions for statehood.” State ex rel. King v. Lyons, 2011-NMSC-004, ¶ 3, 149 N.M. 330, 248 P.3d 878. The Enabling Act “granted over thirteen million acres of federal land to the State of New Mexico, to be held in trust for the benefit of various public schools and other institutions.” Lyons, 2011-NMSC-004, ¶ 5, 149 N.M. 330. “By the Enabling Act certain grants of public lands were made to New Mexico for purposes of which there was a specific enumeration.” Ervien v. United States, 251 U.S. 41, 45 (1919). The U.S. Supreme Court has confirmed that “the disposition of any of the lands or of the money or anything of value directly or indirectly derived therefrom for any object other than the enumerated ones should be deemed a breach of trust.” Id. at 47 (quotation marks omitted). See also Enabling Act, § 10 (“[d]isposition of [these lands]...for any other object other than that for which such particular lands...were granted or confirmed, or in any manner contrary to the provisions of this act, shall be deemed a breach of trust”). The Enabling Act’s terms concerning lands granted or confirmed by the federal government were incorporated into the New Mexico Constitution. See N.M. Const. art. XXI, § 9.

In Article XII, Section 11 of the state constitution, New Mexico enumerated the state educational institutions to benefit from the Enabling Act. Article XII, Section 12 reasserts the Enabling Act's restrictions on land, applying them specifically to state educational institutions: "All lands granted under the provisions of the [Enabling Act,] for the purposes of said several institutions are hereby accepted and confirmed to said institutions, and shall be exclusively used for the purposes for which they were granted[.]" N.M. Const. art XII, § 12. NNMC is confirmed in the state constitution as a state educational institution under the name "northern New Mexico state school, at El Rito." See N.M. Const. art XII, § 11.1

The New Mexico Constitution provides that "[t]he schools, colleges, universities and other educational institutions provided for by this constitution shall forever remain under the exclusive control of the state." N.M. Const. art XII, § 3. The Constitution further provides that "[t]he legislature shall provide for the control and management of each of the [state educational] institutions, except the university of New Mexico, by a board of regents for each institution...." N.M. Const. art. XII, § 13(A).

Under pertinent case law and other legal authority, the state will meet the restrictions of the Enabling Act and the state constitution so long as the trust land and its proceeds are used for the purposes for which they were granted. In United States v. State of New Mexico, 536 F.2d 1324 (10th Cir. 1976), the Tenth Circuit Court of Appeals determined that the Enabling Act required New Mexico to establish and maintain a licensed and certified general miners' hospital. Id. at 1327-29. Under Article XIV, Section 1 of the New Mexico Constitution, "the miners' hospital at Raton" and other listed entities are confirmed as state institutions. The Tenth Circuit acknowledged that the Enabling Act required the trust funds be used for the purpose of a miners' hospital, not necessarily the miners' hospital at Raton, stating that "the trust funds are allotted solely for use at Miners' Hospital at Raton or any other hospital New Mexico may wish to maintain as a 'miners' hospital.'" Id. (emphasis added). Although not stated expressly, the Tenth Circuit's opinion suggests that, with regard to the Enabling Act, the court was relatively indifferent to the hospital's location within the state, as long as funds derived from public land grants were used for a miners' hospital.

Various Attorney General opinions address the constitutionality of moving a constitutionally-confirmed state institution from its constitutionally-specified location. Attorney General Opinion No. 5628 (1953) addressed whether the penitentiary (a state institution, like the miners' hospital, confirmed by Article XIV, Section 1) could be moved out of Santa Fe County. The opinion concluded that the state constitution did not prevent the penitentiary from being moved out of Santa Fe County, stating that "[t]he language 'The Penitentiary at Santa Fe' is merely descriptive and not mandatory in our opinion[.]" Id.

A subsequent Attorney General opinion determined that the Carrie Tingley hospital could be moved from Truth or Consequences without a constitutional amendment, despite being listed in Article XIV, Section 1 as "the Carrie Tingley crippled children's hospital at Truth or Consequences." N.M. Att'y Gen. Op. No. 80-16 (Apr. 30, 1980).

Similar to the 1953 opinion, the later opinion determined that “[t]he purpose of Section 1 [of Article XIV] is to identify land grant beneficiaries, not to permanently fix their locations.” Id. (emphasis in original). Consequently, according to the opinion:

If Carrie Tingley should move to another location, but, nevertheless, remain as essentially the institution defined in Section 1, it would retain its entitlement to the funds...the reference to the location of the various institutions named in Section 1 was meant to identify the institutions, not to locate them. Funds derived from lands granted under the Enabling Act go to institutions because of the purposes they serve, not because of the places where they are located.

Id. (emphasis in original). See also Att’y Gen. Advisory Letter to Representative García, New Mexico House of Representatives, and Senator Harden, New Mexico State Senate, from Assistant Attorney General Stephen A. Vigil (Jan. 26, 2012) (stating that “the references to locations for the state institutions listed in Article XIV, Section 1 are merely descriptive” and do not prevent a state institution from moving to a different location).

We believe that the reasoning employed in the aforementioned opinions applies equally to NNMC. The term “at El Rito” is a description and does not require that NNMC remain solely at the El Rito campus. We conclude that the New Mexico Constitution does not prohibit NNMC from moving the majority of its coursework to the Española campus so long as NNMC continues to exist as a state educational institution defined in Article XII, Section 11 and trust lands granted under the Enabling Act are used for the benefit of NNMC.

If we may be of further assistance, please let us know. Your request to us was for a formal Attorney General’s Opinion on the matters discussed above. Such an opinion would be a public document available to the general public. Although we are providing you our legal advice in the form of a letter instead of an Attorney General’s Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the public.

Sincerely,

CAROLINE MANIERRE
Assistant Attorney General

[1] By statute, the legislature has determined that “[e]xcept for financial transactions, the use of the name northern New Mexico college is hereby permitted in lieu of northern New Mexico state school, for common convenience.” NMSA 1978, § 21-4-2 (2005). For technical support contact