

September 26, 2008 Reconstitution of Board of Trustees of Atrisco Land Grant

The Honorable Bernadette M. Sanchez
New Mexico State Senate

Re: Opinion Request — Reconstitution of Board of Trustees of Atrisco Land Grant

Dear Senator Sanchez:

You have requested our opinion regarding whether a land grant that has been converted into a domestic corporation under NMSA 1978, Section 49-2-18 and then sold to a private corporation by vote of its shareholders can reconstitute the board of trustees of the old land grant under NMSA 1978, Section 49-1-1.

Based upon our examination of the relevant New Mexico statutes, opinions and case law authorities, and on the information available to us at this time, we conclude that the Atrisco Land Grant cannot reconstitute because it has already converted into a domestic corporation under the laws of New Mexico. Furthermore, the 2004 law allowing land grants to become political subdivisions of the state is inapplicable to the Atrisco Land Grant under NMSA 1978, Section 49-1-2(A) because of its prior incorporation under the general corporation laws of New Mexico.

Effective July 1, 2004, NMSA 1978, Section 49-1-1 was amended so as to designate land grants covered by Sections 49-1-1 to 49-1-18 as political subdivisions of the state. According to the statute: "All land grants-mercedes in the state or land grants-mercedes described in Section 49-1-2 NMSA 1978 shall be managed, controlled and governed by their bylaws, by the Treaty of Guadalupe Hidalgo and as provided in Sections 49-1- 1 through 49-1-18 NMSA 1978 as political subdivisions of the state." This change was significant because it allowed land grants to organize and become eligible for state and federal funding.

Prior to the 2004 amendment, some land grants organized as corporations pursuant to a 1967 law, "An Act Providing for Conversion of Corporations Organized under Laws 1891, Chapter 86, Into Corporations Organized under General Corporation Laws." NMSA 1978, § 49-2-18 (1967) (formerly compiled as NMSA 1953, § 8-2-19). The law authorized "certain 'owners and proprietors' of community grants to submit articles of incorporation and bylaws for incorporation of a traditional corporation to hold title to and manage the affairs of such community grant in place of the trustees organized under the 1891 laws." See Westland Development Co. v. Saavedra, 80 N.M. 615, 616, 459 P.2d 141, 142 (1969). The Supreme Court of New Mexico upheld the constitutional validity of this statute in Westland.

Specifically, NMSA 1978, Section 49-2-18 allows twenty or more owners to:

prepare proposed articles of incorporation and bylaws and a plan of conversion for the purpose of converting the existing corporation [organized under Laws

1891, Chapter 86] into a corporation organized under the general corporation law of this state . . . [U]pon the filing the articles of incorporation . . . with the state corporation commission and the issuance of a certificate of incorporation, the corporation organized under Laws 1891, Chapter 86, is converted into a domestic corporation authorized to do business and entitled to all privileges and immunities of a domestic corporation organized under the general corporation laws of this state.

The Atrisco Land Grant converted into a domestic corporation in this fashion.

In analyzing whether the Atrisco Land Grant can reconstitute as a political subdivision under Section 49-1-1, we must first determine whether the Atrisco Land Grant as it now exists is covered by Sections 49-1-1 to 49-1-18. According to NMSA 1978, Section 49-1-2(A):

Sections 49-1-1 through 49-1-18 NMSA 1978 shall apply to all land grants-mercedes confirmed by the congress of the United States or by the court of private land claims or designated as land grants-mercedes in any report or list of land grants prepared by the surveyor general and confirmed by congress, but *shall not apply to any land grant that is now managed or controlled in any manner, other than as provided in Sections 49-1-1 through 49-1-18 NMSA 1978, by virtue of any general or special act.*"

(emphasis added). The Atrisco Land Grant is controlled in a different manner by virtue of its prior incorporation. In 1967, "acting under the authority and in accordance with the provisions of the statute," the Atrisco Grant converted into a domestic corporation "to manage, hold title to, and conduct the affairs of the grant." See Westland, 80 N.M. at 616. The heirs to the land grant became stockholders in Westland Development Co. Therefore, after 1967, the legal status of the Atrisco Land Grant was that of a domestic corporation of the State of New Mexico. In 2006, SunCal Companies purchased approximately 56,000 acres from Westland Development Co. Therefore, the Atrisco Land Grant no longer exists as a land grant or a public corporation. The Atrisco Heritage Foundation was created to promote and preserve the ancestral and cultural heritage and the history of the Atrisco Land Grant.[1]

In sum, Atrisco was a land grant that converted to a public corporation by way of an act of the New Mexico Congress. The shares of that public corporation were purchased by another corporation. Therefore, the grant is controlled in a manner different than provided in Sections 49-1-1 to 49-1-18 by virtue of the 1967 Act and its subsequent sale in 2006. As such, the provision of the law allowing the land grants mercedes to become political subdivisions of the state is inapplicable to the Atrisco Land Grant. This means that the Atrisco Land grant cannot reconstitute the board of trustees of the old land grant.

Your request to us was for a formal Attorney General's Opinion on the matter 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.

Very truly yours,

Stephen A. Vigil
Assistant Attorney General

cc: Albert J. Lama, Chief Deputy Attorney General

[1] [See http://www.atriscoheritagefoundation.org/](http://www.atriscoheritagefoundation.org/)