

Opinion No. 18-2074

January 16, 1918

BY: MILTON J. HELMICK, Assistant Attorney General

TO: Honorable E. A. Cahoon, Pres. Board of Regents, New Mexico Military Institute, Roswell New Mexico.

Right of New Mexico Military Institute to Purchase Real Estate.

OPINION

I have your favor of the 10th instant wherein you ask the following three questions: First, has your Board of Regents the right to purchase land and pay for same with funds derived from the State levy? Second, has the Board of Regents the right to purchase land and pay for same with money earned by the school from tuition? Third, has your Board of Regents the right to purchase land and have same deeded to the State of New Mexico, for the use of the New Mexico Military Institute?

Your questions present a rather difficult problem because the first serious consideration is whether your school has any right to purchase land at all. The University of New Mexico, The Agricultural College, and the Insane Asylum are specifically given the authority to buy realty, when, in the opinion of their boards, the interests of the institutions so demand. This authorization is contained in Section 5176 of the Compiled Laws of 1915. Under Section 5152, the right of eminent domain is conferred upon the Regents of the University of New Mexico, the Agricultural College, the School of Mines, the Insane Asylum, and the Directors of the Penitentiary, and said section would imply the right to acquire land by ordinary purchase. I am unable to find any specific authority granted by law to your Board of Regents to purchase land for the institute. However, I am inclined to think that you would have the implied power to purchase real estate as an incident to your general contract of the institution. The courts have gone to great length in many cases in upholding the implied authority of boards of State schools and colleges, to purchase and hold real estate for the benefit of the institution. Your board, under the provisions of Section 4991, has the power "to make contracts with teachers, to erect buildings and make such other improvements as the institute may require." But I do not believe the word "improvements" comprehends real estate additions to the school.

It would be advisable, I believe, to bring a friendly test case for the purpose of determining your right to purchase real estate for the institute.

Conceding that you have the right to make the purchase of real estate, the question then arises from what source will you get the money? The tuition which you charge seems to be designed for the maintenance of the school, under the provisions of Section 4884. The appropriation to your institute for 1915 was for "maintenance,

improvements and repairs." The appropriation for 1917 was divided into two items; one for maintenance, and one for buildings. A maintenance fund is ordinarily not applicable to the purchase of land, and an appropriation for building purposes, this office has hitherto held, may not be expended for land, unless the building is to be erected on such land.

Conceding that you have the right to purchase land, it seems to me that there would be no objection to your using any surplus which you may have for such purpose; provided, that there remain enough money for the maintenance of the institution. In other words, I do not believe that you can use funds for the purchase of land, to the detriment of the maintenance of the institute.

In regard to the proper grantee of any deed which you might obtain, I will say that I think your third question should be answered in the affirmative. I do not find that either the Military Institute or your board is a body corporate, and it seems to me that title to any land purchased, should be taken by the State for the use of the institute.