

Opinion No. 23-3734

October 5, 1923

BY: MILTON J. HELMICK, Attorney General

TO: Requested by: Hon. L. C. White, President Board of Trustees, New Mexico Reform School, Springer, New Mexico.

Money Received by State Institution from Institutional Lands May be Expended for Institutional Purposes in the Discretion of the Board, and the Provisions of the Appropriation Act Do Not Apply to Such Monies.

The Provisions of the Appropriation Act Apply Only to the Monies Appropriated Therein.

OPINION

{*92} This inquiry arises upon the following facts: The Reform School appears to be in need of a barn which will cost about \$ 4,000.00, but the legislature, in making appropriations for the institution in the 1923 appropriation law neglected to make appropriations for building purposes. The appropriation for the Reform School contains eight specific items, none of which can possibly be used for construction of buildings. In view of the specific character of the items and the stringent provisions of Section 8 of the appropriation law, the barn should not be constructed out of any money appropriated by the legislature. The Board of Trustees of the Reform School fully realizes this, but asks whether or not the barn could be constructed out of moneys derived from the interest accrued upon funds coming from the sale of institutional lands, or derived from the lease money coming from leased lands belonging to the institution. It is stated that the estimated receipts from these sources will amply cover the cost of the construction of the barn which is needed.

In the absence of some legislative direction, I think that the moneys derived from institutional lands may be expended for institutional purposes in the discretion of the Board. It, therefore, becomes necessary to determine whether Section 8 of the 1923 appropriation act which, by the way, is identical with a provision in the 1921 appropriation act, applies to all moneys received by the institution or only to the moneys appropriated by the law in which the section occurs. Section 8 reads as follows:

"Sec. 8. No state institution or other agency of the State shall hereafter purchase or contract to purchase any lands or buildings nor shall any such institution or agency construct or contract to construct any buildings except upon specific authorization by the Legislature for such purpose.

"No official or employee of the State, or of any institution, department or agency thereof, shall be a party either directly or indirectly, to any contract, or interested in any contract for the expenditure of public money, and any such official or employee guilty of the

violation of this provision shall upon conviction be punished by a fine of not less than One Hundred (\$ 100.00) Dollars, nor more than Five Hundred (\$ 500.00) Dollars, and by removal from his office or employment.

"Any appropriation herein made for building or for the purpose of purchasing land or building must be expended, {*93} or contract made for such expenditure, within two years after the date thereof, and no contract shall be entered into in excess of the appropriation therefor, and any contract made, or attempted to be made in excess of any such appropriation shall be null and void. Appropriations made for building or for the purchase of land or buildings shall remain in the State Treasury to the credit of the proper fund until copies of contracts, for the expenditure of the said appropriations are filed with the State Auditor. Any appropriation or part of appropriation for such purposes not expended or contracted for expenditure within the period of two years thereafter shall be held in the State Treasury for re-appropriation by the Legislature."

Former Attorney General, Hon. Harry S. Bowman, in an opinion No. 3300, stated that this section of the 1921 appropriation law was probably invalid because the constitution, in Art. 4 Sec. 16, prohibits the inclusion in general appropriation bills of anything but appropriations. However, in this case, it is not necessary to discuss the constitutionality of section 8 because even if the section is valid I do not see how it can be made to apply to moneys which are not appropriated by the legislature. In the case of State vs. Marron, 17 N.M. 304, the Supreme Court held that matters which are germane to the appropriations and directly connected with them may be included in the appropriation law, but it seems very clear to me that this rule cannot be stretched to the extent of making provisions, such as Section 8, apply to moneys which are not appropriated by the appropriation bill. Even conceding the validity of Section 8, I think it can only apply to appropriations contained in the appropriation law. Certainly if the section is to be considered as general legislation it has no business in the general appropriation law and, on the other hand, if it is properly included in the appropriation law, it cannot be considered as general legislation which applies to anything other than the appropriations.

The practice of institutional boards in this state of expending proceeds from institutional lands apart from appropriations seems to be recognized by the 1923 appropriation law, on page 341. I also think that Section 5109 of the code of 1915 recognizes the right of institutions to spend this income.