

Opinion No. [29-34]

December 3, 1929

TO: Office of the Attorney General of New Mexico

GIRL'S WELFARE HOME -- An educational institution not entitled to proceeds from lands set aside for state penal, charitable and reformatory institutions.

OPINION

Acknowledgment is made of your letter of the 20th ult, enclosing a letter from Judge Reed Holloman of the First Judicial District, in re the grant of one hundred thousand acres of land to the State of New Mexico by the Enabling Act for "State charitable, penal and reformatory institutions." In this letter reference is made to the "Girls' Welfare Home" and the question is raised as to whether or not the Girls' Welfare Home should have its portion of the income from that land.

You ask for an opinion from this office in regard to this matter.

By section 7 of the act of Congress, which we know as the Enabling Act, we find a number of grants of land, among them being grants for certain educational institutions, grants for public buildings, grants for the payment of bonds, a grant for insane asylums, for penitentiaries, for schools and asylums for the deaf, dumb and blind, for miners' hospitals, for normal schools, and for other educational institutions, and a grant "for state charitable, penal and reformatory institutions, one hundred thousand acres."

Inasmuch as this particular grant of one hundred thousand acres is not limited to any particular institution or institutions other than charitable, penal and reformatory, it would seem to have been the intent of Congress that the State Legislature might designate institutions coming within this limitation and apportion the funds derived from such granted lands as legislative wisdom might direct, whereas other grants to institutions which would fall within this definition are specific in their application.

Section 1 of Article XIV of the Constitution is as follows:

"Sec. 1. The Penitentiary at Santa Fe, the Miners' Hospital of New Mexico at Raton, the New Mexico Insane Asylum at Las Vegas, and the New Mexico Reform School at Springer, are hereby confirmed as state institutions."

In keeping with requirements of the Enabling Act and the Constitution, these lands have been selected and a separate fund has been established, for the deposit by the State Treasurer, of all monies derived from such lands.

By act of the legislature, approved June 14, 1912, now known as section 5256 of the Codification of 1915, forty funds were created. This act was amended by Chapter 115,

Laws of 1917 but the amendment did not change this section in any material respect. Among the funds created are,

"State charitable, penal and reformatory institutions, income fund.

State charitable, penal and reformatory institutions, permanent fund, to be equally distributed among the state institutions as defined in Section 1 of Article XIV of the Constitution." (supra)

It is provided that all monies derived from state lands shall be deposited by the Commissioner of Public Lands with the State Treasurer in the respective funds entitled thereto. It will be noted then that the money which belongs to the state charitable, penal and reformatory institutions' permanent fund is, by the legislature, directed to be equally distributed among the State institutions as defined in Section 1 of Article XIV of the Constitution, that is, the Penitentiary at Santa Fe, the Miners' Hospital of New Mexico at Raton, the New Mexico Insane Asylum at Las Vegas, and the New Mexico Reform School at Springer. I am somewhat in doubt as to whether or not the statute contemplates that the State charitable, penal and reformatory institutions' income fund shall be equally distributed among these institutions or not, but my information is that it has been the practice and is the practice to make distribution of funds derived from this grant of one hundred thousand acres annually and equally between the four institutions there named.

Now with reference to the Girls' Welfare Home, the question, of course, first arises as to whether or not this is a "State institution" and second, as to whether, if it is, it comes within the definition of "charitable, penal and reformatory."

By Chapter 86, Session Laws of 1919, the legislature created a "Girls' Welfare Board" composed of five resident women of the State, to be appointed by the Governor with the consent of the Senate, etc. Section 2 of that Act is as follows:

"The said board shall have power to receive, educate, maintain, discipline, control and parole girls under the age of eighteen years, committed to it by the district judges of the State, provided, that the approval of the court committing a girl shall be first had to the terms of all paroles."

Section 3 of the Act provides:

"Sec. 3. The District Courts may, in their discretion commit to the said Board as wards of the court, for terms not exceeding the minority of such girls, girls under the age of eighteen years who have been convicted of felonies less than murder, or of misdemeanors, or who are incorrigible, associate with thieves, or vicious or immoral persons or who are growing up in idleness, or who frequent places of prostitution, or who wander the streets at night without lawful business or occupation, or who habitually use vile, obscene, vulgar, profane or indecent language in public places, or who habitually violate the compulsory school law, or who are guilty of immoral conduct in

public places, but nothing herein contained shall affect any of the provisions of Chapters four and eighty-five, Laws of 1917, this act being cumulative thereto."

It is noted that the sections quoted have reference to a Girls' Welfare Board. I find no recognition of the Girls' Welfare Home other than from appropriations to the Board for the establishment of a home and such mention as is made in Chapter 130 of the Session Laws of 1927, which is defined in its title as:

"An Act to Provide for Construction and Repair of Buildings, Making Improvements, and Purchase of Lands, Water Supply, and Equipment for Certain State Institutions and Providing Funds Therefor by Tax Levies and the Issue and Sale of Debentures to Anticipate the Proceeds of the Collection Thereof."

By Section 1 of that act a tax is provided, the proceeds to be, by the State Treasurer, credited to a fund thereby created to be designated, "Building Fund For State Educational Institutions."

And the institutions named in Section 3 as recipients of the fund are, The New Mexico Military Institute, New Mexico College of Agriculture and Mechanic Arts, New Mexico Normal University at Las Vegas, New Mexico Normal School at Silver City, Spanish-American School at El Rito, New Mexico Asylum for the Deaf and Dumb, New Mexico School of Mines, Girl's Welfare Home. We thus find the legislature, in Chapter 130, Laws of 1927, recognizing the Girl's Welfare Home as a State educational institution, although the powers conferred upon the Girl's Welfare Board seem applicable to an institution falling within the definition "charitable, penal or reformatory."

I am of the opinion that under the present status of legislation, the Treasurer is without authority to set aside to the Girl's Welfare Home or the Girl's Welfare Board any part of the monies derived from the grant lands set aside for State penal, charitable and reformatory institution. I am further of the opinion that this is a matter within the control of the legislature and that by proper enactment this institution (for I look upon the two names as pertaining to one institution) might be permitted to share in the income derived from this particular grant of one hundred thousand acres.