

Opinion No. 32-392

February 26, 1932

BY: Frank H. Patton, Asst. Attorney General

TO: Mr. Hm. Hymel, Chairman, Capitol Custodian Committee, Santa Fe, New Mexico.

{*144} Your letter of February 25th calls for information in regard to the duty of the New Mexico State Penitentiary to furnish power and electrical current to the Mansion and Capitol Building.

You state that you understand that there is an old law, but do not know whether or not it is still in force and you desire to know, in the event that it is still in force whether you can obligate the Penitentiary to furnish such power and light.

From an examination of the statutes we find that the Legislature of the Territory of New Mexico, in 1903, incorporated a provision in the General Appropriation Act for the 55th and 56th fiscal years under the appropriation made to the Penitentiary, which is, no doubt, the law you have in mind. This provision is as follows:

"Provided further, that the Penitentiary is hereby required to furnish electric lights at cost to the Capitol Building and the Deaf and Dumb Asylum, and shall also be authorized to sell electric lights in the city of Santa Fe upon such terms as in the judgment of the Superintendent of the Penitentiary and the Board of Penitentiary Commissioners are proper."

This provision is found in Section 7, Chapter 108, of the Laws of 1903.

The same provision has been carried forward into New Mexico Statutes, Annotated, Codification of 1915, and is therein Section 5051. We find the same act again carried forward into New Mexico Statutes, Annotated, 1929 Compilation and cited as Section 130-134 of said Compilation.

Section 4 of Article 22 of the State Constitution provides:

"All laws of the Territory of New Mexico in force at the time of its admission into the union as a State, not inconsistent with this constitution, shall be and remain in force as the laws of the state until they expire by their own limitation, or are altered or repealed; and all rights, actions, claims, contracts, liabilities and obligations, shall continue and remain unaffected by the change in the form of government."

Compilers of the 1915 Codification and of the 1929 Compilation have considered that this act was still in force. We do not believe that it can successfully be stated that the act has expired by its own limitation and certainly it has not been altered or repealed. Under this provision the Capitol Building and the Deaf and Dumb Asylum have a right within

the meaning of the Constitution to obtain electric lights at cost from the State Penitentiary and an obligation is placed upon that institution to furnish such electric lights to them.

The statute is mandatory and places the duty of furnishing such electric lights to the Capitol Building and Deaf and Dumb Asylum squarely upon the Board of Penitentiary Commissioners.

No duty is placed upon the Penitentiary to furnish any power other than electric lights and they are also given power to sell such electric lights in the city of Santa Fe.

We do not know, of course, why this law has never been enforced, but it is presumed that such lack of enforcement has been due to lack of finances.

Neither do we undertake to state whether or not the enforcement of this law is feasible or practical at this time, but it is our opinion that the act is in force at this time and as above stated places the obligation upon the Penitentiary.