

## Opinion No. 45-4707

May 8, 1945

**BY:** C. C. McCULLOH, Attorney General

**TO:** Mr. C. R. Sebastian State Comptroller Santa Fe, New Mexico

{\*59} We are in receipt of your letter of May 3, 1945 in which you state {\*60} that Bernalillo County owns property that was once the old county jail, that the property is now being used as a warehouse for the county highway department, that the county jail is now included in the court house building, and that the county now desires to sell the same and, if possible, use the proceeds to construct a new county warehouse for the highway department. You ask our opinion as to whether this may legally be done.

Section 15-4503 of the 1941 Compilation, referred to by you, provides that:

"Whenever any county may have a court house **and** jail which is not suitable or necessary for such county, the county commissioners thereof are hereby authorized to sell and dispose of such court house and jail \* \* \* and apply the proceeds thereof on liquidation of the cost and expenses of erecting such new court house and jail."

The question immediately arises as to whether the word "and" in the clause "court house and jail" should be construed to read "or". This does not appear to be the case in view of the fact that Section 15-4503 is Section 3 of Chapter 54 of the Laws of 1905. Section 1 of this chapter (15-4501) provided as follows:

"The county commissioners of any county not having a court house **or** jail or a suitable court house **and** jail etc."

It thus appears that the framers of Chapter 54 of the Laws of 1905 had two situations in mind; first, the situation where there was a jail separate from the court house, and secondly, the situation where the jail was included in the court house. It was only in the latter case that upon the sale of the court house and jail that the proceeds had to be used for constructing a new court house and jail.

In view of the foregoing, it is my opinion that Section 15-4503 does not apply to the old Bernalillo county jail. Further, you will note that this section is not mandatory but merely authorizes the county commissioners to use the proceeds for the purpose of constructing a new court house and jail.

Sections 15-4402 and 15-4403 provide the manner for the sale of county property and do not provide the fund to which proceeds shall be devoted. It would thus appear that the proceeds could be credited to any proper fund and used for any properly budgeted purpose.

Trusting the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD,

Asst. Atty. General