

Opinion No. 45-4737

June 25, 1945

BY: C. C. McCULLOH, Attorney General

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

{*90} Replying to your letter of June 6, 1945, wherein you request an opinion on the following question:

"We would like the opinion of your office as to whether the County may dispose of real estate (Lots and old jail building substituted by new jail on other lots) in other manners beside public auction provided that benefits accrued to the County are greater than by following another procedure and whether a sale of land by private bids would carry a legal title to it."

The four sections of the New Mexico Statutes 1941 Annotated, relating to this subject are:

"15-3401. General powers. -- Each organized county in this state shall be a body corporate and politic, and as such shall be empowered for the following purposes: * * *

Third. To sell and convey any real or personal estate owned by the county and to make such order respecting the same as may be deemed conducive to the interests of the inhabitants.

Fourth. To make all contracts and do all other acts in reference to the property and concerns necessary to the exercise of its corporate or administrative powers. * * *

"15-4402. Sale -- Public auction. -- The boards of county commissioners within the state of New Mexico are hereby authorized after having made application therefor to the district court of their respective {*91} judicial districts, to sell at public auction all those public buildings, lots or additions belonging to the same, whenever such public buildings, lots or additions have been substituted by other public buildings, lots or additions."

"15-4403. Sale -- Appraisers -- Notice -- Payment. -- The judge of the district court shall appoint three (3) appraisers to appraise such property proposed to be sold as specified in the preceding section and such appraisers shall make and return under oath an appraisement of the actual cash value of such property, and upon return of such appraisement to the district court, the board of commissioners shall proceed to advertise such property for public sale, giving at least three (3) weeks notice of the hour, time and place of such sale, which notice shall be inserted in some daily or weekly newspaper published in the city or town where such property is located, if one be published therein; if not, in some paper of general circulation therein, and shall cause

such property to be offered for sale at the time stated in such notice; and such property shall not be sold for less than two-thirds of the appraised value, and it shall be the duty of such board to require the payment in cash of at least one-half of the purchase-price of said property, and they shall require the purchaser in lieu of the remainder of the purchase-price, to execute property security for the amount of same.'

"15-4503. Sale of old building -- Use of proceeds. -- When 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 the land on which they may be situated in the **manner provided by law** and apply the proceeds thereof on liquidation of the cost and expenses of erecting such new courthouse and jail."

Section 15-4503, Laws of 1905, Chapter 54, was amended in the Laws of 1939, Chapter 123, the material amendment being the sale to be made **in the manner provided by law**, instead of "on the best terms obtainable." In making this amendment, it appears reasonable to assume that the Legislature had in mind Sections 15-4402, 4403 as **the manner provided by law**, and the procedure outlined therein should be followed to assure the legal title in the purchaser.

The general powers enacted in Section 15-3401, Laws of 1876, have been limited and the procedure of sale outlined by Sections 15-4402, 15-4403 and 15-4503 of the 1941 Compilation.

By THOS. C. McCARTY,

Asst. Atty. General