

Opinion No. 50-5310

July 18, 1950

BY: JOE L. MARTINEZ, Attorney General

TO: Honorable J. D. Hannah State Comptroller Santa Fe, New Mexico

{*167} I have your letter of June 19, 1950, in which you ask the opinion of this office as to whether the Electrical Administrative Board is authorized by law to purchase real estate and to construct a building thereon to serve as official headquarters of the board. You state that this board has a very substantial cash balance in their own funds with which to construct this building. The powers of the Electrical Administrative Board are set forth in § 51-2204 of the 1941 Compilation, as follows:

"The board shall hold regular meetings quarterly and may hold special meetings at the call of the chairman. It shall be the duty of said board to administer and enforce the provisions of this act and all orders of the board issued in conformity to this act; to adopt and issue necessary orders, rules and regulations for the enforcement of the provisions of this act; to examine all applicants for licenses and certificates of qualifications and to grant licenses and certificates to all such applicants as show the proper qualifications and who have paid the prescribed fees, to revoke or suspend any license or certificate on the grounds set forth in section 16 (§ 51-2215) of this act, and to take such other action as the board may find necessary for carrying out the provisions of this act. The board may delegate to the electrical engineer of the board the power to conduct examinations and to grant licenses and certificates. Three (3) members of the board present at any meeting shall constitute a quorum for the transaction of business, but any action taken at any meeting shall require the affirmative vote of at least three (3) members.

"The board shall issue orders prescribing the minimum standards for the installation of electrical wiring, which orders shall embody the requirements prescribed by the National Electrical Code as approved by the American Standards Association and the National Electrical Safety Code as approved by the American Standards Association; Provided, that the board may by order prescribe standards higher than those prescribed by said codes.

"All orders, rules and regulations issued by the board shall be printed and shall be distributed to all deputy state electrical inspectors and municipal electrical inspectors in the state of New Mexico. Said orders, rules and regulations shall take effect on a date fixed by the board therein, which shall not be less than thirty (30) days after the adoption of same by the board. All such orders, rules and regulations shall also be available for general distribution at the office of the board."

The reading of the above quoted section clearly shows that the Legislature has not given this {*168} board power to own real estate or to construct buildings. The power of

the board is limited to the licensing of electricians and the establishment and enforcement of standards of electrical construction. Since the authority has not been conferred by the Legislature the question remains as to whether or not such a power can be implied. The authorities appear to be unanimous in holding that it can not. 42 Am. Jur., Public Administration Law, Section 26 states:

"Administrative boards, commissions, and officers have no common-law powers. Their powers are limited by the statutes creating them to those conferred expressly or by necessity or fair implication. General language describing the powers and functions of an administrative body may be construed to extend no further than the specific duties and powers conferred in the statute."

It is not felt that the power to license electricians and prescribe minimum standards for electrical construction by implication authorizes the construction of a building or the purchase of land by an agency with limited powers.

It is, therefore, the opinion of this office that the Electrical Administrative Board has no authority to purchase real estate or to construct buildings, and any action taken by it to that end is void.

In passing, I note that you state the Electrical Administrative Board has a substantial cash balance in its funds. The board's balance sheet at the State Treasurer's office shows that the lowest balance credited to the account of the board during the last fiscal year was \$ 73,065.05. This balance steadily increased throughout the year and on June 30, 1949, was \$ 86,607.74. The board's balance at the present date is \$ 90,776.07. I call your attention to the last paragraph of § 51-2218, which provides as follows:

"Should there be an unexpended balance in the electrical administrative fund at the end of any fiscal year, an estimate shall be made by the board of the approximate amount that will be collected the succeeding year, and the excess above the amount necessary to pay all expenses for the current year, so that no deficit shall occur in said fund, shall be transferred by the state treasurer to the general fund of the state."

May I suggest that it would appear appropriate to have a very substantial portion of this cash balance transferred to the general fund of the state in accordance with the above quoted provision of the electrical administrative act?