

Opinion No. 53-5848

November 23, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Marshall S. Hester, Supt. New Mexico School for the Deaf 1060 Cerrillos Road Santa Fe, New Mexico

{*267} You have requested our opinion on two questions:

1. May the City of Santa Fe condemn portions of the land belonging to the New Mexico School for the Deaf along Cerrillos Road in Santa Fe in order to widen this road?
2. Can the school purchase a strip of land from private owners on the other side of the road, and lease or sell it to the City for a nominal sum for its use in widening the road, thus avoiding interference with the school property?

It appears that the property the City desires to condemn is state property and is already devoted to a public purpose and that it cannot, therefore, be condemned by the City for another public purpose. *City of Albuquerque vs. Garcia*, 17 N.M. 445. In that case the court held:

"To defeat the attainment of an important public purpose to which lands have already been subjected, the legislative intent must unequivocally appear from the fact of the enactment, or from the application of it to the particular subject matter of it, so that by reasonable intendment, some special object sought to be obtained by the exercise of the power granted could not be reached in any other place or manner."

We know of no legislative authority authorizing a municipality, a subordinate branch of the state, to take lands held by its creator. See also, Attorney General's Opinion No. 5624, dated December 31, 1952, at Page 18 and 19.

In answer to your second question. We know of no authority for the New Mexico School for the Deaf to spend its money other than for the purpose for which it was created and this does not include purchasing land which it does not intend to use for this purpose or making donations or contributions to a municipality. If property not devoted to a public purpose is available on the other side of the road, it would seem that the City could acquire it directly from the owners or by condemnation.

It is conceivable that widening the road might make traffic less hazardous to the school and should your Board of Regents determine that the use of the additional strip along Cerrillos Road would be beneficial to the school, we see no reason why it could not permit its use for right-of-way purposes.

By: Special Assistant