

Opinion No. 54-6001

August 13, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Miss Clarice A. Perkinson Assistant Superintendent Girls' Welfare Home Box 6038, Station B. Albuquerque, New Mexico

{*461} By your letter of July 30th you request our opinion as to the right of the Girls' Welfare Board to grant an easement through its property for highway purposes, and you call our attention to Opinion No. 5755, dated May 15, 1953, in which we quoted the limitations on the power of the Girls' Welfare Board when it was confronted with a request to sell sand and gravel from the State property occupied by the Welfare Home.

The property over which the present easement is required for state highway was apparently obtained by the State for the use and benefit of the Girls' Welfare Board on November 29, 1924. It appears to have been purchased from the proceeds of the sale of property formerly used by the Girls' Welfare Board on South Broadway, and this property was sold pursuant to authority contained in Chapter 88 of the laws of 1923, which authorized the Girls' Welfare Board to sell the South Broadway property and apply the proceeds on the purchase of other real estate. The statute stated "In such sale, the deed of conveyance shall be executed, acknowledged and delivered by the Governor, and attested by the Secretary of the State".

At that time it appeared that the legislature considered such specific authority necessary for the Board to sell its property, and as pointed out in the Opinion No. 5755, we still cannot say that similar authority is not necessary in the present case. We do note, however, that since that date the Board has been listed among those institutions authorized to acquire by condemnation in the name of the State of New Mexico title to the lands deemed necessary by the Board for the use of the institution. Section 25-924, N.M.S.A., 1941 (Chapter 59, Session Laws of 1947). Also since that date Section 6-228, N.M.S.A., 1941 (Chapter 128, Session Laws of 1943), has authorized any state department to sell or dispose of real estate subject to the approval of the State Comptroller, and Section 6-708, N.M.S.A. 1941 (Chapter 124, Section 8, Laws of 1943), has authorized the Purchasing Agent to sell at private sale property in his hands owned by the State or any department thereof at a price not less than was paid for the same. Whether this latter statute applies to real estate, so far as we know, has not been determined.

{*462} Although the powers of administrative boards are limited by the statute creating them, as we stated in Opinion No. 5755, the authorities are just as strong to the effect that they are deemed to have all those powers which may be necessary or essential in connection with the performance of their duties, 73 C.J.S. 374, the Attorney General Opinion No. 5831.

A former opinion of this office No. 5455, dated November 9, 1951, to Governor Mechem held that the Girls' Welfare Board, with authority of the Board of Finance, could purchase land adjacent to this tract and it might seem as logical to hold that the Board could sell property it no longer needed if necessary for carrying out its duties by the same means and under the same authority it could purchase property if so necessary. In Opinion No. 5755, we recognized the conflict between the lack of explicit power and the necessity of holding that the Board must be able to do those things necessary to receive, educate, maintain, discipline, control, etc., the girls, as required of it by Section 45-205, N.M.S.A., 1941. We did not feel, however, that the sale of sand and gravel from this property could be said to be necessary in order to carry out those duties.

We cannot now say that the granting of an easement to a county or the State Highway Commission for the purpose of a state highway is necessarily included with the powers conferred upon the Board under Section 45-504. This determination should be made by your Board. If the Board feels that the highway is beneficial to the Institution and would contribute to its success in carrying out its powers and duties under Section 45-504, we see no reason why permission should not be granted the state or county to so utilize the land.

A somewhat similar question was presented when it was necessary to widen the highway in front of the New Mexico School for the Deaf, and in our opinion No. 5848, November 23, 1953, we informed Mr. Hester, the Superintendent, as follows:

"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."

We are informed that a highway must be placed very close to the land now utilized by the Girls' Welfare Home. This may result in disturbing the isolated situation which you wish to maintain. Should the road cross your property so that the Board retain ownership on both sides of it, it could prohibit the location of undesirable buildings from fronting on the highway and thus might avoid the undesirable fringe settlements which so often spring up along an important state highway. We are not the ones to say that such consideration alone would not warrant the consent of the Board to the proposed location of the highway through its land. There may, of course, be other reasons known to the Board why the location might be beneficial to it so that it could give its consent and grant the easement even though technically the legislature has designated no officer or agent of the State of New Mexico to execute the easement. As we suggested in our opinion No. 5755, an effort should be made to acquire this specific authority at the next Session of the Legislature.

By: Walter R. Kegel

Assist. Attorney General