

Opinion No. 55-6141

April 18, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Howell Earnest, President, Board of Penitentiary Commissioners, Santa Fe, New Mexico

This will acknowledge receipt of your letter of April 4, 1955, in which you ask our opinion on several questions relating to sale of penitentiary lands and the disposition of proceeds therefrom.

Your questions involve construction of §§ 42-1-5 of the 1953 Compilation and 42-1-11 of the 1953 Compilation, as amended by Chapter 238, Laws of 1955. The two sections read as follows:

"Disposition of unneeded property. -- If and when the Penitentiary of New Mexico, as such body corporate, shall be possessed of any real, personal or mixed property of whatsoever kind or nature which, in the judgment of the commissioners of said body corporate, shall no longer be required for the use of said penitentiary, then in such event the Penitentiary of New Mexico shall have the right to sell, trade, mortgage or otherwise alienate any such real, personal or mixed property for such price and upon such terms as to the commissioners of said institution shall seem just and proper, and the proceeds to be derived from any such transaction shall become the property of said corporation; Provided, however, that in all cases of the sale, trade, mortgage or other alienation of real property belonging to the Penitentiary of New Mexico the same shall not take effect until approved by the state board of finance."

"Improvements in penitentiary -- Labor by convicts -- The Board of penitentiary commissioners shall decide what improvements shall be made in the penitentiary and on property owned by the penitentiary, whether the same shall be enlarged, or the erection of the extension of the prison or prison walls, the erection of workshops or other buildings or improvements shall be made; Provided, that said commissioners shall not make any improvements that will require an expenditure of money in excess of the appropriations made by the legislature for that purpose, which improvements shall be made under the direction of the superintendent on plans furnished by said board, and he shall employ such number of convicts in making such improvements as said board may deem advisable, and shall employ the remainder of the convicts as may be most advantageous to the state or the penitentiary.

"All amounts received by the Penitentiary of New Mexico from the sale or mortgaging of any real property is hereby appropriated for the erection of buildings and other improvements to be constructed on property owned or leased from the State of New Mexico by the Penitentiary of New Mexico, or to be used for the purchase of equipment

for prison industries, or used to pay interest on, or to retire any bonds issued by the penitentiary commissioners."

You first ask whether monies received from the sale of Penitentiary lands and deposited with the State Treasurer may be spent without prior approval of the State Board of Finance. Although prior approval of the Board of Finance is not required except as to the sale of the land, in the above sections, the general authority of the Board of Finance under Chapter 11, Article IV of the 1953 Compilation would indicate that a budget should be submitted and approved by the Board of Finance for these expenditures before payment is made.

You ask next whether the Board may issue vouchers against the proceeds from the sale of land for payment of expenditures incurred for legal and abstracting expense in clearing title incident to the sale of the land. Although the last paragraph of § 42-1-11 indicates that the use of monies so received is to be limited to certain purposes, it is our opinion that expenditures necessarily incurred in clearing title to the land so as to render the receipt of these monies to the Penitentiary possible, are proper expenses and that it is the net amount received by the Penitentiary which is governed by that paragraph. This question is very analogous to the right of counties to use proceeds derived from bond issues to pay attorney's fees in connection with the issue in view of Article 9, Section 9 of the Constitution, providing that money borrowed by a county shall be used for the purpose for which it was obtained. There, this office held in Opinion No. 5206, with which we concur, that such payments were proper.

You also ask whether or not expenses incurred for abstracts, legal fees and quiet title suits on lands previously sold by the Penitentiary and paid from the severance tax building and improvement fund of 1953 are reimbursable to the building fund from the proceeds from the sale of other property. Although these items would probably be reimbursable, inasmuch as the proceeds from the severance tax bonds and the proceeds under the provisions of § 42-1-11 are to be used for the same purpose, we can see no necessity for making such reimbursement.

By Walter R. Kegel

Assistant Attorney General