

Opinion No. 56-6556

December 4, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: J. F. Anderson, Director, Surplus Property Agency, State of New Mexico

In your letter of November 28, 1956, you state that the Department of Health, Education and Welfare of the United States Government, has raised a question as to whether or not your department is still in existence. You ask us to determine this question and if our answer is in the affirmative, to further advise you as to whether your agency has the authority to screen warehouses and distribute surplus property to health institutions, educational institutions, civil defense organizations and service educational organizations and collect service charges for such services rendered.

The office of Surplus Property agent was established by Ch. 45 L 1947, which act provided that the office should expire at the end of the 36th fiscal year, which would have been July 30, 1949. In 1949, however, the State Legislature provided for the continuance of this agency under the Educational Budget Auditor by virtue of Chapter 179, Laws 1949. Again in 1951, the legislature continued the appropriation for the agency, and in so doing approved its transfer from the office of the Educational Budget Auditor to the State Department of Education, Chapter 227, Laws 1951. Subsequent sessions of the legislature have continued to appropriate funds for this agency, not by specific line item, but pursuant to budget request submitted by the State Department of Education.

In view of the continuing appropriations made by the legislature for this office, it is our opinion that the legislature, by virtue of such appropriations, continued and extended the original law above mentioned and that your office now exists as an agency of the State of New Mexico.

As to your second inquiry, Section 4 of Chapter 45, Laws of 1947 provides, in part, as follows:

"The surplus property agent shall purchase surplus property at the request of any agency, institution or political subdivision of the State of New Mexico."

The institutions you mentioned, to-wit; Health Institutions, Education Civil Defense Organizations, and Service Educational Institutions, all fall within the broad terms of the above quoted section, and therefore your agency has the authority to purchase surplus property on their behalf.

Section 3, of the above mentioned act provides that you may pay the freight and other expenses incident to purchase, and bill the agency for whose benefit you make the purchase and therefore service charges may be charged.

I trust the foregoing is a sufficient answer to your inquiry.

By: Walter R. Kegel

Assistant Attorney General