

Opinion No. 57-121

June 4, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Honorable Frederick G. Comstock, State Budget Director, Santa Fe, New Mexico

QUESTIONS

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Whether the State Park Commission can purchase items of an administrative nature, such as office furniture and fixtures to be used in the Commission's Office at Santa Fe, New Mexico, out of funds appropriated to the Commission by Chapter 146, Laws 1957?

CONCLUSION

No.

OPINION

ANALYSIS

Your question specifically arises under § 2 of said Chapter 146, which section reads as follows:

"The funds appropriated by this act to the state park commission shall be covered into the state park fund and be expended solely for nonrecurring capital outlay purposes of basic improvement and development of the seven existing state parks, as may be determined to be necessary by the commission, including but not limited to renovating, repairing, improving and **making additions** to any existing buildings, facilities or **equipment** ; construction of picnic and camping areas; the construction of new water and sewage systems, the extension of existing systems, or both; the purchase of machinery, boats, lifesaving equipment and automotive equipment; the construction of new buildings and facilities or the acquisition of buildings or facilities; professional and architects' fees; and the purchase of land. The funds appropriated by this act shall remain to the credit of the commission until expended." (Emphasis supplied),

and which section thus calls for our opinion on the meaning of the term "nonrecurring capital outlay." This same question was before the Attorney General when he rendered Opinion No. 6327, dated November 28, 1955, from which we quote as follows:

"The funds hereby appropriated to each of the state institutions and agencies listed in section 1 of this act shall be expended solely for nonrecurring capital outlay purposes,

including the acquiring, repairing, renovating, improving, constructing, and equipping of state owned institutional buildings and other permanent improvements, and including architects' fees for such projects, and including the purchase of land, as may be determined to be necessary in the case of each institution or agency by its board of regents or other governing authority.'

"You ask (1) whether or not the purchase of office equipment is within this statute, and (2) whether or not painting is a capital outlay item within this statute.

"In answer to question (1), it is our feeling that the traditional definition of capital outlay has been modified by all the language after the first comma following the words 'capital outlay purposes'. The word 'equipping' would appear to be within the meaning of the definition furnished in this statute, and, therefore, any office equipment would be within the meaning of this statute."

Were it not for certain language hereinafter quoted and commented upon by us contained in Chapter 146, Laws 1957, we would, in accordance with Opinion of the Attorney General No. 6327, supra, answer your question in the affirmative, since such opinion was concerned with a statute which, as does Chapter 146, considerably modifies the term "capital outlay." However, you will observe that the following language is used in § 2 Chapter 146 of Laws 1957:

". . . improvement and development **of the seven existing state parks.** . . ." (Emphasis supplied).

And you will further observe that § 3 of Chapter 146 uses the following language:

"The State Park Commission shall apportion the funds appropriated by this act among the seven existing state parks . . ."

We believe that the intention of the Legislature was that the funds appropriated by Chapter 146 should go solely for the improvement of the seven existing state parks, and should not be used in any way to improve the offices of the State Park Commission at Santa Fe. We believe that this reference in Chapter 146 to expenditure of the funds at the seven state parks is sufficient to demand an answer opposite to that rendered in Opinion of the Attorney General No. 6327, supra. We wish to add that this present opinion in no way conflicts with or overrules the above cited opinion of the Attorney General.