

Opinion No. 57-133

June 13, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Joel B. Burr, Jr., Assistant Attorney General

TO: Florence Perkinson, Superintendent, State of New Mexico Girls' Welfare Home, P. O. Box 6038, Station B, Albuquerque, New Mexico

QUESTIONS

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1. Does the Girls' Welfare Board have the power to dispose of the property owned by the Girls' Welfare Home?
2. May the proceeds derived from such a sale be used in the Girls' Welfare Home building program?

CONCLUSIONS

1. Yes, subject to the approval of the State Board of Finance.
2. Only if such use is properly authorized by legislative appropriation.

OPINION

ANALYSIS

Section 42-5-4, N.M.S.A., 1953 Compilation, designates the Girls' Welfare Home as a State institution. Section 6-1-8, N.M.S.A., 1953 Compilation, P. S., sets out the procedure for the disposal of real and personal property by any department, commission, agency, or institutional board of the State. It reads as follows:

"Any department, commission, agency, or institutional board of this state is hereby empowered to sell or otherwise dispose of real or personal property belonging to such state department, commission, agency or institution, subject to the approval of the state board of finance. The state comptroller shall have the power to credit any payment received from the sale of any such real or personal property to whatever fund of such state department, commission, agency or institution as he deems appropriate. And the head of such department, or the president, or chairman of the commission, or the governing board of such agency or institution is hereby authorized to execute such deeds, leases, right-of-way easements, bills of sale or other documents necessary to convey all or any interest in said real or personal property, without warranty."

In view of the above statute, the Girls' Welfare Board would have to obtain the approval of the State Board of Finance before disposing of any property owned by the State Girls' Welfare Home.

In answer to the second question, it will be noted that the above statute gives the State Comptroller the power to credit any payment received from the sale of such real or personal property to whatever fund of such state department, commission, agency, or institution as he deems appropriate. However, Article 4, Section 30 prohibits the payment out of the treasury of any money other than interest or other payments on the public debt except upon appropriations made by the legislature. A study of the 1957 General Appropriations Act discloses that the Legislature appropriated \$ 250,000.00 to the Girls' Welfare Home. An additional \$ 30,000.00 for each fiscal year is to be appropriated from the Public School Equalization Fund and transferred to the State General Fund to the account for the Girls' Welfare Home. (See Chapter 235, Laws of 1957, pp. 551.)

Since the use of any proceeds derived from such a sale would result in an expenditure of funds in excess of the amount appropriated by the Legislature, we must conclude that any proceeds realized from such a sale would have to remain in the treasury until its expenditure was properly authorized by legislative appropriation.