

Opinion No. 57-82

April 29, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Santiago E. Campos,
Assistant Attorney General

TO: The Regents of the University of New Mexico c/o Rodey, Dickason, Sloan, Akin &
Robb, Counsellors and Attorneys at Law, First National Bank Building, Albuquerque,
New Mexico

QUESTIONS

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Does the University of New Mexico have the power to enter into the lease hereinafter described?

CONCLUSION

Yes.

OPINION

ANALYSIS

The University of New Mexico proposes to lease a tract of land owned by it under, substantially, the following terms: The period of the lease would be fifty years with the option in the lessee to renew for two periods of twenty-five years each. The lessee will develop the premises as a shopping center within three years from the execution of the lease. During construction, the lessee shall pay lessor the sum of \$ 1,000.00 per year as rental and thereafter \$ 150.00 per acre or one-third of lessee's annual net income from the premises, whichever may be greater. All taxes, assessments, and other public charges shall be paid by the lessee. The lease further contains standard provisions for termination and ejectment upon default.

Touching the management of its realty, the University is invested with the following powers contained in § 73-30-15, N.M.S.A., 1953:

"All of the said institutions, including the New Mexico Military Institute, shall be entitled to receive all the benefits and donations made and given to similar institutions of learning and charity in other states and territories of the United States, by the Legislation of the Congress of the United States, or from private individuals or corporations, and for the benefit of said institutions they shall have power to buy and sell or lease or mortgage realty, and do all things that, in the opinion of the several boards, will be for the best interests of said institutions, and are in the line of its object."

And regarding contractual powers generally, § 73-25-4, N.M.S.A., 1953, provides:

"The regents of the university and their successors in office shall constitute a body corporate under the name and style of, the Regents of the University of New Mexico, with the right, as such, of suing and being sued, or contracting and being contracted with, of making and using a common seal and altering the same at pleasure."

Although I find no cases construing the above grants of power, it seems clear enough that the two cited statutes provided the authority to enter into the proposed lease.

It is assumed for purposes of this opinion that the land in question is not a part of the trust lands of which the University is the beneficiary and which lands are under the control and supervision of the State Land Commissioner.