

Opinion No. 58-117

June 9, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Paul L. Billhymer, Assistant Attorney General

TO: Mr. H. B. Wood, Board Manager, Contractors' License Board, P. O. Box 1179, Santa Fe, New Mexico

QUESTION

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1. May the Contractors' License Board contract to spend appropriated funds budgeted for maintenance under the State designated Line Item No. 23.0, Buildings and Structures, for the improvement or permanent changes to be made upon its leased premises, specifically for the exterior plastering of the leased building, razing of an existing garage and for the removal of an existing stairway?
2. May the Contractors' License Board spend money from the appropriated funds for the construction of a block wall contingent upon the Board's failure to exercise the right of option to purchase said property as provided in the attached Lease-Purchase Agreement?

CONCLUSIONS

1. No.
2. No.

OPINION

ANALYSIS

Since both questions involve the same problem, they will be considered together. It is obvious that the question to be determined is whether money budgeted for maintenance can be spent to make capital improvements on leased premises. We believe that there can be no doubt that the proposed changes can only be considered as capital improvements. They could not in any way be considered as part of maintenance.

By the terms of the Lease the Contractors' License Board is required only to keep the premises in as good repair as same were at commencement of the term, wear and tear excepted. It can be seen that there is no obligation to make any capital improvement in the premises. Attention is further called to the Ninth paragraph of the Lease wherein provision was made for improvements and alterations to be supplied at Lessor's

expense. Presumably these were all the improvements and alterations that would be required for the use by the Board.

Since there is no obligation on the Contractors' License Board to make improvements of the type set forth in the question, we believe that any attempt to use any state funds to make such would be really in the nature of a gift or donation. This could violate Article 9, Section 14, New Mexico Constitution. We therefore conclude that state money cannot be spent to make the improvements set forth in your questions.