

Opinion No. 59-166

October 16, 1959

BY: HILTON A. DICKSON, JR., Attorney General

TO: Major General John P. Jolly The Adjutant General State of New Mexico Santa Fe, New Mexico

{*258} This is in response to your recent inquiry asking for an opinion regarding the following question:

If an armory were built for joint utilization by the New Mexico National Guard and reserve components of the armed forces pursuant to 10 U.S. C. § 2231, et seq., would the control over such armory be vested in the State Armory Board?

Our answer to your question is that the control over such an armory would be vested in the State Armory Board.

Joint utilization of armories by the National Guard establishments of the various states and the reserve components of armed forces is provided for in 10 U.S.C. § 2231, et seq.

We have previously held that such construction of an armory under this act, providing for joint expenditures of State and Federal funds and joint use by the National Guard and the reserve components is lawful under the New Mexico Constitution. See Opinion No. 58-235 dated December 17, 1958. However we have not specifically ruled on your opinion as to whether control of such an armory after construction would remain in the Board.

Our opinion is that the State Armory Board will be vested with control of such an armory. There is no doubt but that the New Mexico statutes give the board such control. Section 9-7-2, N.M.S.A., 1953 Compilation states that the control and supervision of all {*259} armories and other facilities built or acquired for the use of the National Guard of the State shall be vested in the State Armory Board. Section 9-7-3, supra, authorizes the board to enter into contracts in behalf of the state with the Federal government or any of its agencies for the purpose of participating in any joint Federal - State military construction program or for the purpose of receiving Federal money for military construction. These sections, when read together, clearly vest control of armories built partly by Federal funds or in connection with a Federal-State military construction program, in the Board.

The above-cited Federal Enabling Act is not, in our opinion, in derogation of the State authorities reviewed above. The armory construction in question is the type mentioned in 10 U.S.C. § 2233 (a) (4). This section authorizes the Secretary of Defense to contribute to any State or Territory, District of Columbia, or Puerto Rico such amounts

for the construction, among other things, by it of additional facilities as he determined to be required by any increase in strength of the Army National Guard or the Air National Guard of the United States. Section 2236 (a) then provides that except as otherwise agreed when the contribution is made (which you would have no authority to do in view of the State authorities cited above), facilities provided by contribution under Section 2233 (a) (4) may be used by units of two or more armed forces reserve components only to the extent that the State considers practicable. This language puts control of joint use squarely up to the State and the board would be, as we have pointed out, the agency to make this determination of joint use.

Therefore, it is our opinion that an armory built by joint Federal-State fund expenditure pursuant to 10 U.S.C. § 2231, et seq., and used jointly by the New Mexico National Guard and the armed forces reserve components will be under control of the State Armory Board.

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