

## **Opinion No. 61-109**

October 26, 1961

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Oliver E. Payne, Assistant Attorney General

**TO:** Mr. Bill Hendrix, State Purchasing Agent, State Capitol Building, Santa Fe, New Mexico

### **QUESTION**

#### QUESTION

Must the Girls' Welfare Home in Albuquerque carry insurance on buildings which are of no further use to the Home?

#### CONCLUSION

Yes, but the value of such buildings for purposes of insurance coverage should not be based on reproduction cost.

### **OPINION**

#### ANALYSIS

Section 6-1-4, N.M.S.A., 1953 Compilation, provides in pertinent part as follows:

"All officers and boards charged with the custody and control of public buildings belonging to the state shall keep the same insured for the benefit of the state against loss or damage by fire, at least to the amount of three-fourths (3/4) of the estimated value of the buildings at the time the insurance is applied for. . . ."

The three buildings belonging to the Girls' Welfare Home which are here in question are the old administration building, the barn and silos, and the chicken house. As we understand it, one or more of the buildings has been condemned and none are of any further use to the home. The Board of the Girls' Welfare Home plans to raze all of these buildings as soon as funds to do so become available.

For sometime past these buildings have not been insured. However, under a new blanket public institutions insurance policy these buildings are covered. Apparently the value of the buildings for purposes of coverage and premiums was computed simply by using reproduction cost. The new replacement cost given to the various buildings was approximately as follows: administration building \$ 172,000.00, barn and silos \$ 20,000.00 and the chicken house \$ 12,650.00.

The whole purpose of the mandatory fire insurance provisions of Section 6-1-4, supra, is to make certain that if public buildings are destroyed by fire, at most there will be only a one-fourth loss to the State. For this reason, this Section would seem to contemplate that the value of buildings which are needed and are in use be based on reproduction cost. By basing value on reproduction cost, like buildings can be construed to replace those destroyed by fire.

However, "value" is a term which has various meanings depending upon the context in which it is used and the type of transaction being considered. **Andrews v. Commissioner of Internal Revenue**, 135 F.2d 314, **In re School of Industrial Arts**, 154 N.Y.S. 2d 402, 2 Misc. 2d 403.

It would appear to be a waste of the State's money to consider reproduction cost the criterion by which the value of old buildings which are no longer of any functional use is to be determined. If by unfortunate happenstance such old and unneeded buildings were destroyed by fire, it seems clear that the agency involved would have no reason to and would not desire to replace them.

In ascertaining the value of this type of building for mandatory insurance coverage requirements, depreciation due to age, wear and tear and obsolescence should be deducted from reproduction cost. **Mesce v. City of Chicago**, 301 Ill. App. 429, 23 N.E. 2d 188. In the case of the building here involved, one or more of which has been condemned and all of which are to be torn down because they are obsolete and no longer serve any useful purpose, the value for purposes of the insurance which must be carried pursuant to Section 6-1-4, supra, should be based solely on salvage value. This figure can be determined by getting bids, or at least estimates, as to how much it will cost to raze the buildings if the firm doing the work is allowed to take the salvaged materials, as against the cost of such work if the wrecking firm is not to receive the salvaged materials. It seems obvious that if this method is used the value of such buildings, and thus the insurance premium to cover them against loss by fire, will be quite small.