

Opinion No. 62-54

April 2, 1962

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

TO: Mr. John W. Gott, Chief, Public School Finance Division, Department of Finance and Administration, State Capitol Building, Santa Fe, New Mexico

QUESTION

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1. Must school districts obtain legislative approval for sales of real property for sums of one hundred thousand dollars (\$ 100,000.00) or more?
2. If the answer to question 1 is in the negative, are such sales subject to approval of the State Board of Finance.

CONCLUSIONS

1. No.
2. Yes.

OPINION

ANALYSIS

The answer to your first question is governed by Section 6-1-8.1 (A), N.M.S.A., 1953 Compilation (P.S.), which provides in pertinent part as follows:

"Any sale, trade or lease for a period exceeding twenty-five years in duration of real property belonging to any **agency, board, department, commission or institution of this state**, which sale, trade or lease shall be for a consideration of one hundred thousand dollars (\$ 100,000.00) or more, shall be subject to the **ratification and approval of the state legislature** prior to such sale, trade or lease becoming effective . . ." (Emphasis added).

You will note that school districts are not mentioned at all, and certainly it cannot be argued that local school districts are agencies, boards, departments, commissions or institutions of this State.

In answering your second question, the relevant statutory provision is Section 6-1-8, N.M.S.A., 1953 Compilation (P.S.), in which school districts are expressly enumerated. This Section provides in pertinent part as follows:

"Any department, commission, agency or institutional board of this state, or **local public school district** is empowered to sell or otherwise dispose of **real or personal property** belonging to such state department, commission, agency, institution or local public school district, **subject to approval of the state board of finance. . . .**" (Emphasis added).

We see then that while school districts can sell property for sums in excess of \$ 100,000.00, in order to do so approval of the State Board of Finance is mandatory.

Another provision in Section 6-1-8.1, supra, which we deem it appropriate to discuss is the following:

"The provision specified in Section 6-1-8 New Mexico Statutes Annotated, 1953 Compilation, requiring approval of the state board of finance as a prerequisite to consummating such sales or dispositions of realty shall not be applicable in instances wherein the consideration for such sale, trade or lease shall be for a consideration of one hundred thousand dollars (\$ 100,000.00) or more **and wherein a state agency, board, department, commission or institution not herein specifically excepted is a contracting party**, and in every such instance, the legislature shall specify its approval prior to such sale, trade or lease becoming effective."

Insofar as the disposal of real property for a consideration of \$ 100,000.00 or more is concerned, State agencies need legislative approval only. However, since school districts are not covered by the provisions of Section 6-1-8.1, supra, under the terms of Section 6-1-8, supra, they are permitted to dispose of property for a consideration of \$ 100,000.00 or more subject only to approval of the State Board of Finance.