

## Opinion No. 64-92

July 16, 1964

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Thomas A Donnelly, Assistant Attorney General

**TO:** Finlay MacGillivray, Manager, New Mexico State Fair, Albuquerque, New Mexico

### QUESTION

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What legal limitations exist relative to the New Mexico State Fair Commission entering into short or long term leases or contracts with private individuals or firms involving the private use of fair grounds and facilities during off-season periods?

#### CONCLUSION

See Analysis.

### OPINION

#### ANALYSIS

Several pertinent statutes are controlling as to the question phrased by you. First, Section 6-1-8.1, N.M.S.A., 1953 Compilation, provides in part that:

"A. 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 **consideration of one hundred thousand dollars (\$ 100,000) or more**, shall be subject to the ratification and approval of the state legislature prior to such sale, trade or lease becoming effective. \* \* \*"  
(Emphasis supplied).

This statute necessitates legislative confirmation of any lease of realty of the commission for a period exceeding twenty-five years and which involves a consideration of \$ 100,000 or more.

Secondly, Section 6-1-8, N.M.S.A., 1953 Compilation, empowers the commission to enter into leases of realty contingent upon express approval of the State Board of Finance. This statutory provision sets out in applicable part:

"A. Any department, commission, agency or institutional board of this state, or local public district is empowered to sell or otherwise dispose of real or personal property

belonging to such state department, commission agency or institution or local public school district, subject to approval of the state board of finance; \* \* \*\*

As detailed above, authorization exists to dispose of an interest in real or personal property, with the prior approval of the state board of finance. This office has previously interpreted the provisions of such statute to require State Board of Finance approval of all leases of real property. See Attorney General's Opinion, No. 63-26, dated March 29, 1963; and No. 63-106, dated August 20, 1963.

In **Tri-Bullion Corp. v. American Smelting and Refining Co.** (1954), 58 N.M. 787, 277 P 2d 293, the New Mexico Supreme Court stated that a lease constitutes for a specified period of time, a divesture of the right of possession and "for all practical purposes is equivalent to absolute ownership."

As discussed in Attorney General's Opinion No. 63-106, dated August 20, 1963, if the public body concerned desires to enter into a lease of real property to any private party or religious group and proposes to give **exclusive** right of possession and occupancy to lands and buildings, the State Board of Finance must give its approval pursuant to Section 6-1-8, N.M.S.A., 1953 Compilation. Where, however, the use permitted is temporary or brief, and limited to hours when the property is not needed for public purposes, the approval of the State Board of Finance is not necessary, and the public body may or may not authorize such usage according to its discretion.

In the latter instance, where the use of realty is non-exclusive and limited to time periods when the property is not needed for public purposes, and the public authority does not divest itself of dominion over the buildings or property, the public authority may elect to permit private wages of the property if done on a non-discriminatory or equal basis.

Article IX, Section 14 of the New Mexico State Constitution recites in part:

"Neither the state, nor any county, school district, or municipality, except as otherwise provided in this Constitution, shall directly or indirectly lend or pledge its credit or make any donation to or aid of any person, association or public or private corporation . . ."

Because of such requirement it is incumbent upon any public agency or Commission to obtain reimbursement for any actual expenses occasioned by reason of such permitted private use of public facilities.