

Opinion No. 65-208

October 20, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Mr. Clay Buchanan, Director, State Legislative Council, State Capitol Building, Santa Fe, New Mexico

QUESTION

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Does Article 4, Section 28 of the Constitution of New Mexico prohibit a present member of the legislature, who was a member in 1963 when the State Capitol Expansion Act was enacted, and who was also a member in 1965 when additional funds were authorized for the purpose of the State Capitol Expansion Act, from entering into a contract for the sale of items to the state for the purpose of furnishing capitol building?

CONCLUSION

No.

OPINION

{*340} ANALYSIS

Article IV, Section 28, New Mexico Constitution, provides in pertinent part as follows:

". . . nor shall any member of the legislature during the term for which he was elected nor within one year thereafter, be interested directly or indirectly in any contract with the state or any municipality thereof, **which was authorized by any law passed during such term.** (Emphasis added)

The State Capitol Expansion Act of 1963 (Section 6-2-14, et seq., N.M.S.A., 1953 Compilation (P.S.)) authorized the State Board of Finance to issue and sell a maximum of \$ 6,000,000 in severance tax bonds upon receipt of a duly passed resolution from the Capitol Building Improvement Commission that need exists for improvement of existing capitol grounds and buildings or "for the acquisition of land for additional buildings, and for the design and construction of additional buildings."

The 1963 Act makes no specific mention of furnishing such improved or new capitol buildings. This being so we must turn our attention to legislation enacted in 1965. The pertinent provision is Section 6-2-23, N.M.S.A., 1953 Compilation (P.S.) which authorizes the State Board of Finance to issue and sell a maximum of \$ 2,000,000 in

severance tax bonds to carry out the provisions of the State Capitol Expansion Act **and** "to equip, remodel and furnish capitol facilities, including the executive mansion, when the capitol buildings improvement commission certifies that need exists for the issuance of such bonds for such purposes."

This Act simply provided a method of financing to accomplish the objectives and the title so states in the following language:

"An Act relating to state capitol facilities; providing a method of financing."

The basic legislation authorizing the Capitol Buildings Improvement Commission to furnish capitol buildings was enacted in 1945 as Section 6-2-10, N.M.S.A., 1953 Compilation. This section authorizes the Capitol Buildings Improvement Commission, "in its discretion, to purchase, subject to the approval of the state purchasing agent, all necessary furniture and equipment necessary and requisite for the furnishing and equipping of the capitol building, as reconstructed and altered, and any new building . . ."

It is this section rather than the 1965 legislation from which the Capitol Buildings Improvement Commission derives its authority to furnish capitol buildings. Consequently, we conclude that the legislator who served in the 1965 session is not precluded from contracting with the state for capitol furnishings.

Our conclusion is based primarily on the decisions of our Supreme Court in the cases of **State v. State Highway Commission**, 38 N.M. 482, 35 P. 2d 308 and **State ex rel Baca v. Otero**, 33 N.M. 310, 267 Pac. 68. In the first case the question involved was whether a legislator could sell insurance to the state. The court held that the Highway Commission could buy insurance from a legislator who served in the session which broadened the coverage for Highway Department employees. The rationale was that the power had existed in the Highway Department to purchase workmen's compensation prior to the particular legislator's service {341} during the term of office when the coverage was broadened.

We have an analogous situation here. The power of the Capitol Buildings Improvement Commission to furnish capitol buildings has existed since 1945. The 1965 legislation simply provided another method of financing for such purposes **if** the Capitol Buildings Improvement Commission and the State Board of Finance decided to do so.

Also in point is the case of **State ex rel. Baca v. Otero**, supra, in which the issue was Article 4, Section 28. It was argued that relator could not serve as rural school supervisor since the only authority for the position was contained in the appropriation bill enacted while relator was a member of the legislature. The court held otherwise stating that authority for the employment existed by virtue of an earlier law and that all the appropriation bill did was to provide the necessary funds.

We must remember that Article 4, Section 28 is designed to prevent a member of the legislature from benefiting from an act of the legislature of which he is a member at the expense of the general welfare. **Barney v. Alexander**, Nev., 178 Pac. 978. Such could hardly be the case here. The items must be bid through the State Purchasing Agent and, in addition, considerable control rests with the Capitol Buildings Improvement Commission and the State Board of Finance.