

Opinion No. 69-144

December 9, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Gary O'Dowd, Deputy Attorney General

TO: Mr. Oliver E. Payne, Chief Counsel, State Highway Department

QUESTIONS

Does Section 6-1-8.1, N.M.S.A., 1953 Compilation require legislative approval before the State Highway Department condemns property of the State held in the name of the Intertribal Indian Ceremonial Association?

CONCLUSION

No.

OPINION

{*230} ANALYSIS

Section 6-1-8.1, N.M.S.A., 1953 Compilation requires prior legislative approval for any "sale" of real property belonging to any agency, board, department, commission or institution of this state, which sale shall be for a consideration of \$ 100,000.00 or more. Condemnation is a sale of property. See **U.S. v. 263.5 Acres of Land, More or Less**, 54 F. Supp. 692, 693 (Cal. D.C., 1944); **In re Astoria Blvd.**, 171 Misc. 1018, 13 N.Y.S. 2d 433, 437 (1939). Thus it would appear that Section 6-1-8-1, supra, is applicable unless there is some other controlling statutory provision. It is our opinion that Section 22-9-41, N.M.S.A., 1953 Compilation is the controlling provision when property of a state agency is condemned by the State Highway Department.

Section 22-9-41, supra, provides that the State may acquire public lands deemed necessary for highway purposes by purchase, exchange, {*231} condemnation or otherwise. The State Board of Finance must determine the greater public need, unless the State Agency in whom title is vested concedes that the purpose for which the property is to be taken is the greater public need. We must therefore conclude that the State Highway Department may condemn lands belonging to the Intertribal Indian Ceremonial Association without legislative approval if the provisions of Section 22-9-41, supra, are complied with.

It should be noted, however, that even though legislative approval prior to condemnation by the State Highway Department is not necessary, Section 6-1-8, N.M.S.A., 1953 Compilation still controls the distribution of proceeds from the sale or condemnation. See Attorney General Opinion 69-56, issued June 13, 1969.