

January 26, 2012 Advisory Letter---New Mexico Boys' School

The Honorable Thomas A. García
New Mexico State Representative
P.O. Box 56
Ocate, New Mexico 87734

The Honorable Clinton D. Harden, Jr.
New Mexico State Senator
148 CRH
Clovis, New Mexico 88101

Re: Opinion Request – New Mexico Boys’ School Closure

Dear Representative García and Senator Harden:

You have requested our advice regarding the authority of the New Mexico Children, Youth, and Families Department (“CYFD”) to administratively close the New Mexico Boys’ School (“NMBS”) at Springer without congressional or legislative approval. You also question CYFD’s authority to use state trust land income allocated to the NMBS at its Youth Diagnostic and Development Center (“YDDC”) in Albuquerque. More specifically, you ask:

- (1) May CYFD close a constitutionally-created land grant state institution without legislative or congressional authority?
- (2) Is the closure of the NMBS in Springer different than the move of Carrie Tingley hospital from Truth or Consequences to Albuquerque?
- (3) May CYFD use land grant income of the NMBS for YDDC in Albuquerque, and if so, is CYFD limited in any way in the expenditure of the land grant income?
- (4) May CYFD, without legislative or congressional authority, decide which juvenile corrections facility constitutes a “reformatory” for boys?
- (5) In light of N.M. Attorney General Opinion No. 80-16, does the NMBS remain essentially the institution defined in Article XIV, Section 1 of the New Mexico Constitution so as to retain entitlement to the land grant funds if it is closed and its function moved to YDDC?
- (6) Does CYFD’s decision to close the NMBS and use the NMBS’s trust funds for YDDC meet the requirements of *United States v. New Mexico*, 536 F.2d 1324 (10th Cir. 1976), for a literal, not liberal, interpretation of the use of trust funds?

Based on our examination of the relevant constitutional, statutory, and case law authorities, and the information available to us at this time, we conclude that (1) CYFD

may close a constitutionally-created land grant state institution without legislative or congressional authority; (2) the closure of the NMBS has different legal consequences than the move of Carrie Tingley hospital from Truth or Consequences to Albuquerque; (3) CYFD may not use income derived from congressional land grants at YDDC; (4) CYFD may not unilaterally determine what constitutes a “reformatory” for boys for purposes of the constitution and Enabling Act; (5) YDDC is not entitled to receive land grant income intended for the NMBS because it is not the same entity as the NMBS; and (6) CYFD’s decision to close the NMBS and use the NMBS’s trust funds for YDDC does not meet the requirements of *United States v. New Mexico*, 536 F.2d 1324 (10th Cir. 1976), requiring a literal interpretation of the use of the trust funds.

History of the New Mexico Boys’ School at Springer

In 1898, an act of Congress granted to the Territory of New Mexico fifty thousand acres “for the establishment and maintenance of a reform school.” See Act of June 21, 1898, 30 Stat. 484, ch. 489, § 6 (commonly known as the “Ferguson Act”). Five years later, the territorial legislature “established a territorial institution to be known and called the “New Mexico Reform School,” to be located somewhere within the counties of Taos, Rio Arriba, or San Juan, and accepted the congressional land grant and all terms and conditions that applied to the reform school. See 1903 N.M. Laws, ch. 2, §§ 2, 5. The reform school was “intended ... for the confinement, instruction and reformation of juvenile offenders ... and of any persons of idle, vicious or vagrant habits of both sexes ... under the age of eighteen years, who may be convicted of any offense less than a felony punishable by imprisonment in the penitentiary for the term of life....” *Id.* § 10. Originally located in El Rito, the reform school was moved to Springer in 1909. See 1909 N.M. Laws, ch. 126, § 1.

Subsequently, under the New Mexico Enabling Act, Congress granted New Mexico an additional 100,000 acres in trust “for state charitable, penal and reformatory institutions.” Act of June 20, 1910, 36 Stat. 557, ch. 310, § 7. The Enabling Act also confirmed and ratified previous land grants made by Congress, including those made in the Ferguson Act. *Id.* at §§ 10, 12.[1] Section 10 of the Enabling Act required New Mexico to hold the land grants in trust and to dispose of them only for the objects “specified in the respective granting and confirmatory provisions.” Section 10 further provided that “the natural products and money proceeds of any of said lands shall be subject to the same trusts as the lands producing the same.”

In Article XXI, Section 9 of the state constitution, New Mexico consented to the Enabling Act’s provisions concerning the land grants to the state and “the terms and conditions upon which said grants ... were made....” In Article XIV, as originally adopted, the state confirmed the New Mexico Reform School and three other institutions as state institutions[2] and stated that “[a]ll lands which have been or which [a] may be granted to the state by congress for the purpose of said several institutions are hereby accepted ... and shall be exclusively used for the purpose for which they were or may be granted....” N.M. Const. art. XIV, §§ 1, 2.

Legal Analysis

(1) May CYFD close a constitutionally-created land grant state institution without legislative or congressional authority?

We found nothing in the Enabling Act, state constitution or state statutes addressing the closure of an institution listed in Article XIV, Section 1. As described above, the Ferguson Act and Enabling Act granted certain lands in trust to be used for reform schools and reformatory institutions in New Mexico. Those Acts did not, however, require the state to establish a reform school, keep the reform school open once it was established or impose any requirements for closing the reform school. Similarly, Article XIV confirms NMBS and other state institutions and accepts the conditions of the Enabling Act, but is silent regarding the closing of the institutions.

The NMBS was governed by specific statutory provisions until they were repealed in 1988. See 1988 N.M. Laws, ch. 101, § 51.[3] The same 1988 enactment placed the operation of the NMBS and other state juvenile facilities under the jurisdiction and supervision of the former Youth Authority. *Id.* § 13. CYFD took over the administration of the NMBS in 1992, when CYFD was established and assumed the Youth Authority's functions. See 1992 N.M. Laws, ch. 57, § 2, *codified at* NMSA 1978, § 9-2A-2(A). Apparently, the legislature intended to leave the operation and maintenance of the NMBS to CYFD's discretion.

Although not free from doubt, we believe that, in light of CYFD's jurisdiction over the NMBS and the absence of any express limitation in state law and the Enabling Act, CYFD has sufficient authority and discretion to close the NMBS as it deems appropriate. Nevertheless, as discussed in detail below, we do not believe that CYFD is authorized to use land grant funds dedicated to the NMBS for purposes not contemplated under the Enabling Act and New Mexico Constitution.

(2) Is the closure of the boys' school at Springer different than the move of Carrie Tingley hospital from Truth or Consequences to Albuquerque?

There are clear substantive differences between moving and closing a constitutionally-created state institution. Like the NMBS, the "Carrie Tingley crippled children's hospital at Truth or Consequences" was among the state institutions confirmed under Article XIV, Section 1 of the state constitution. After it was established, the hospital was moved to Albuquerque and is now a component of the UNM Health Sciences Center. Although it is no longer located in Truth or Consequences, the Carrie Tingley hospital still exists as a separate entity and is called the Carrie Tingley hospital. See NMSA 1978, § 23-2-1 ("In order to provide care and treatment for the crippled children of New Mexico in need of long-term inpatient or outpatient care, there is hereby created the Carrie Tingley crippled children's hospital program to be administered by the board of regents of the University of New Mexico"). Furthermore, the hospital continues to operate, consistent with its original purpose, exclusively as a pediatric hospital, providing care to children

and adolescents with complex musculoskeletal and orthopedic conditions, rehabilitation needs, developmental issues and long-term physical disabilities.[4]

In contrast, the NMBS was not simply moved from Springer to another location in the state. The NMBS no longer exists in any form. The school was closed as a result of a settlement agreement between the ACLU of New Mexico/Youth Law Center in San Francisco and CYFD.[5] The institution does not exist as an independent component of the greater YDDC;[6] rather YDDC uses the income from the New Mexico Boys' School land grant for YDDC – not for a specific New Mexico Boys' School. There is no evidence that supports the existence of a separate New Mexico Boys' School at YDDC like the existence of a separate Carrie Tingley hospital at UNM Health Sciences Center.

The factual distinctions between moving and closing a constitutionally-created state institution have significantly different legal consequences. The New Mexico Attorney General's Office has issued opinions concluding that state institutions confirmed under Article XIV, Section 1, including the Carrie Tingley hospital, may be moved from the locations specified in the constitution. See N.M. Att'y Gen. Op. No. 80-16 (1980) (no constitutional amendment required to move Carrie Tingley Crippled Children's Hospital from its location at Truth or Consequences); N.M. Att'y Gen. Op. No. 5268 (1953) (no constitutional prohibition against moving the state penitentiary out of Santa Fe County). According to these opinions, the references to locations for the state institutions listed in Article XIV, Section 1 are merely descriptive; the purpose of Section 1 is to "identify the institutions entitled to benefit from lands granted for certain purposes," not to permanently fix their locations. N.M. Att'y Gen. Op. No. 80-16 (1980).

This Office's conclusion in Attorney General Opinion No. 80-16 that the Carrie Tingley hospital could be moved to a different location without a constitutional amendment was expressly conditioned on the hospital continuing in existence as one of the land grant beneficiaries named in Article XIV, Section 1. In other words, a state institution that is relocated may continue to benefit from the land grant made for the purpose of that institution. Although not expressly stated, the Opinion implies that if the state goes further and closes a state institution, the state can no longer use the institution's land grant and its proceeds.

This conclusion is supported by a Tenth Circuit case interpreting Article XIV and the Enabling Act in an analogous situation involving the reorganization of Miners' Hospital in Raton. See *United States v. New Mexico*, 536 F.2d 1324 (10th Cir. 1976). The history of the Miner's Hospital parallels the NMBS's. The Miners' Hospital was created pursuant to a federal land grant made under the Ferguson Act and was confirmed as a state institution in Article XIV, Section 1. *Id.* at 1326. New Mexico received an additional 50,000 acres in trust under the Enabling Act for "miners' hospitals for disabled miners." *Id.*[7] At issue in the Tenth Circuit case was the New Mexico Health and Institutions Department's decision to change the Miners' Hospital from a general hospital to an "immediate care facility." Eligible miners in need of care not available at the reorganized Miners' Hospital were admitted to general hospitals and payment for such care was charged to the income from the Miners' Hospital trust funds.

The state argued that Congress granted the trust lands to New Mexico for the “primary purpose of promoting the public welfare by attending to the health needs of disabled miners and that the trust terms should be liberally construed to effectuate this purpose.” 536 F.2d at 1326. The Court of Appeals rejected this contention. It observed that applicable decisions of the United States Supreme Court “consistently applied a narrow interpretation to the terms of the Enabling Act.” *Id.* at 1327 (citations omitted). The court went on to state that:

While the underlying motivation for the trust may have been a desire on the part of Congress generally to provide for the health care of miners, the specific purpose of the trust was the establishment of a “miners’ hospital.” The wording of the Enabling Act evidences a determination by Congress that the health needs of New Mexico miners could best be provided by a separate hospital for miners.

Id. From this it followed, according to the court, that “trust funds cannot be spent at other hospitals even though such money is being used to provide health care for miners.” *Id.*

Just as in *United States v. New Mexico*, where the Tenth Circuit found that the Enabling Act intended the establishment of a separate hospital for miners, the Enabling Act similarly provided for the establishment of a separate reform school. The state constitution effectuated the Enabling Act’s purpose by confirming the NMBS and pledging to use lands granted by Congress “exclusively ... for the purpose for which they were or may be granted.” N.M. Const. art. XIV, §§ 1, 2. Although *United States v. New Mexico* did not address the closing of a state institution, the Tenth Circuit held that the state could use trust funds to provide health care to miners only at the Miners’ Hospital. The logical extension of the Tenth Circuit’s reasoning is that CYFD may use land grant funds Congress intended for reform schools only for the NMBS and any other reform school confirmed in Article XIV, Section 1 of the state constitution. When CYFD closed the NMBS, the specific beneficiary intended the by Enabling Act no longer existed and the state could no longer use the land grants made for that purpose.

(3) May CYFD use land grant income of the NMBS for the YDDC in Albuquerque? If so, is CYFD limited in any way in the expenditure of the land grant income?

As discussed above, New Mexico is obligated to use trust lands granted and confirmed to the state under the Enabling Act and the proceeds of those lands for the specific purposes designated by Congress. Although *United States v. New Mexico* did not address the closure of a constitutionally-created and confirmed state institution, it precisely stated the narrow constraints Congress imposed on the state’s authority to use trust lands under the Enabling Act. With regard to the Miner’s Hospital, the decision concludes:

Since the purpose of the trust was to establish and to maintain a “miners’ hospital,” the provisions requiring that the trust funds only be expended for the trust purpose are to be literally construed. This literal construction means that

trust funds cannot be spent at other hospitals even though such money is being used to provide health care for miners.

536 F.2d at 1327. Similarly, in the case of NMBS, the purpose of the trust was to establish and maintain a “reform school.” In Article XIV of the state constitution, the NMBS was identified as a state institution benefiting from the trust and the state pledged to use trust lands granted for the purpose of NMBS and other named institutions “exclusively ... for the purpose for which they were or may be granted.” Applying the literal construction of the trust purpose mandated by *United States v. New Mexico*, land grant funds dedicated to the NMBS under the Enabling Act and state constitution can only be used for the NMBS; they cannot be used for YDDC, even if YDDC performs services or functions similar to those that the NMBS performed before it was closed.

(4) May CYFD, without legislative or congressional authority, decide which juvenile correction facility constitutes a “reformatory” for boys?

We assume that your question focuses on CYFD’s authority, if any, to designate a reform school for purposes of the state’s use of land grant funds. As discussed above, Section XIV, Section 1 of the New Mexico Constitution identifies the state institutions that are land grant beneficiaries. The reform school or “reformatory” for boys identified as a land grant beneficiary in Section 1 is the NMBS. CYFD could, consistent with the constitution, relocate the NMBS and continue to operate it as a separate reformatory for boys. However, absent a constitutional amendment or permission from the federal government, CYFD has no authority to decide that a juvenile correction facility other than the NMBS constitutes a reformatory for boys for which land grant funds may be used.

(5) In light of N.M. Attorney General Opinion No. 80-16, does the NMBS remain essentially the institution defined in Article XIV, Section 1 of the New Mexico Constitution so as to retain entitlement to the land grant funds if it is closed and its function moved to YDDC?

As discussed above, the Enabling Act’s provisions governing the use of land grant funds are construed literally. When Congress created a land grant trust for a reform school, it evidenced a clear intent and need for a separate institution. When CYFD closed the NMBS and moved its function to the YDDC, the NMBS ceased to exist as a separate institution for purposes of the trust. In order to use land grant funds held in trust for the NMBS, CYFD must re-open the NMBS.

(6) Does CYFD’s decision to close the NMBS and use the NMBS’s trust funds for YDDC meet the requirements of *United States v. New Mexico*, 536 F.2d 1324 (10th Cir. 1976), for a literal, not liberal, interpretation of the use of trust funds?

For the reasons discussed in our responses to the previous questions, we do not believe that CYFD’s decision to close the NMBS and transfer its function to YDDC

meets the requirements of *United States v. New Mexico*. Under a literal interpretation of the Enabling Act's provisions governing the use of trust funds, the state must maintain a separate institution or institutions that function as reform schools as Congress intended. See *United States v. New Mexico*, 536 F.2d at 1327 (relying on New Mexico's and the United States' interpretation of the land grant trust arrangement for the Miners' Hospital to determine the definition of "hospital" for purposes of the trust).

Under Article XIV, Section 1 of the state constitution, the NMBS was identified as a reform school entitled to the use of the land grant trusts created under the Enabling Act. It appears that CYFD has closed the NMBS and the NMBS no longer exists. Unless Article XIV, Section 1 is amended to identify YDDC as a state institution entitled to use the land grant funds Congress dedicated to reform schools and reformatories, the state may not use those funds for YDDC.

If we may be of further assistance, please let us know. Your request to us was for a formal investigation and opinion on the matters discussed above. Such an opinion would be a public document available to the general public. Although we are providing you our legal analysis in the form of a letter instead of an Attorney General's Opinion, we believe this letter is also a public document. Therefore, we may provide copies of this letter to the public.

Sincerely,

STEPHEN A. VIGIL
Assistant Attorney General

[1] The Ferguson Act and the Enabling Act must be read and construed together to determine the policy of Congress. See *Regents of the Univ. of N.M. v. Graham*, 33 N.M. 214, 221-222, 264 P. 953, 956 (1928) (holding that the Enabling Act did not modify the objects for which lands granted under the Ferguson Act and their proceeds could be used).

[2] When it was first adopted, Article XIV, Section 1 confirmed the penitentiary, miners' hospital, insane asylum and reform school as state institutions. By constitutional amendment proposed and adopted in 1955, the names of the insane asylum and the reform school were changed, respectively, to the state hospital and the boys' school. See H.J. Res. No. 15, 22nd Leg., 1955 N.M. Laws 866. In 1960, a second amendment to Section 1 added the Carrie Tingley crippled children's hospital, the girls' welfare home and the Los Lunas mental hospital. See H.J. Res. No. 14, 24th Leg., 1959 N.M. Laws 1149.

[3] Although provisions governing the operations of the NMBS no longer exist, statutory references to the NMBS remain in effect and reflect Congress' and the state legislature's intent that the NMBS exist as a separate institution, see, e.g., NMSA 1978, § 6-13-2 (including the NMBS among the state institutions with authority to issue bonds under the Institution Bond Act); §§ 17-3-23 to -24 (making it lawful for a child committed

to the NMBS to fish without a license “in waters located on the property of the school”); § 19-1-17(B)(20), (21) (including the NMBS permanent and income funds in the listing of land grant funds maintained by the state land commissioner); and, in particular, separate from the YDDC, *see, e.g.*, § 22-1-2(W) (listing the NMBS and the YDDC separately in the definition of “state agency” or “state institution” for purposes of the Public School Code); § 30-9-10(H) (listing the NMBS and the YDDC separately in the definition of “school” for purposes of the Criminal Code’s provisions governing sexual offenses).

[4] See <http://hospitals.unm.edu/hospitals/unmcth.shtml>.

[5] The settlement agreement is available at:

<http://www.bhc.state.nm.us/pdf/RFP2008/CYFD-JJS-ACLUAgreement.pdf>.

[6] See http://www.cyfd.org/pdf/jjs_fy10_annual_report.pdf, pg. 2.

[7] According to the Tenth Circuit Court of Appeals, the grant for “a miner’s hospital” under the Ferguson Act and the Enabling Act’s grant for “miners’ hospitals for disabled miners” were “for the same trust purpose.” 536 F.2d at 1329.