

January 16, 2025

OPINION
OF
RAÚL TORREZ
Attorney General

Opinion No. 2025-02

To: The Honorable Harold Alan Edmonson, Jr., President, New Mexico Military Institute
Board of Regents

Re: REVISED¹ Attorney General Opinion – Distributions from Land Grant Permanent Funds
under 2022 Amendment to Article XII, Section 7 of the New Mexico Constitution

Questions

1. Is NMMI entitled to receive a proportionate share of the additional 1.25% annual distribution authorized by the 2022 amendment?
2. If not, is NMMI entitled to receive a proportionate share of the 60% portion of the additional 1.25% annual distribution if NMMI provides for early childhood education?

Answers

1. No. The additional 1.25% annual distribution authorized by the 2022 amendment is made from the permanent school fund, which contains trust lands granted under the Enabling Act and is dedicated to the support of public schools. Because NMMI is not a public or common school for purposes of the Enabling Act, NMMI is not a beneficiary of the permanent school fund and is not entitled to a share of the additional 1.25% annual distribution.

2. No. The same reasoning applies as above. Because NMMI is not a public or common school for purposes of the Enabling Act, NMMI is not an intended beneficiary of the permanent school fund described in Article XII, Section 2 and is therefore not entitled to a share

¹ Our office issued Opinion 2024-03 on February 5, 2024. That opinion was based on our review of the applicable law and the information provided and available to us at that time. New information has since come to light that warrants certain revisions to our response. Our ultimate conclusions, however, are unchanged. We hereby withdraw Opinion 2024-03 and issue this revised opinion in its place.

of the additional 1.25% annual distribution, for any purpose set forth in the 2022 amendment, including the provision of early childhood education services.

Background

Article XII, Section 7(A) of the New Mexico Constitution provides for the investment of “land grant permanent funds,” which are defined as

the permanent school fund described in Article 12, Section 2 of this constitution and all other permanent funds derived from lands granted or confirmed to the state by the act of congress of June 20, 1910, entitled “An act to enable the people New Mexico to form a constitution and state government and be admitted into the union on an equal footing with the original states.”

The federal act referred to in Article XII, Section 7(A) is the Enabling Act, under which the United States Congress, as part of the terms for the admission of New Mexico as a state, made grants of public land subject to certain terms. *See* Act of June 20, 1910, 36 Stat. 557, ch. 310 (Enabling Act). Section 10 of the Enabling Act requires that the lands be held by the state

in trust, to be disposed of . . . only in [the] manner as herein provided and for the several objects specified in the respective granting and confirmatory provisions, and 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.

The trust funds from the land grants must be “prudently invested,” and “[d]istributions from the trust funds shall be made as provided in Article 12, Section 7” of the New Mexico Constitution. *Id.*

Article XII, Section 7 provides for two distributions from the land grant permanent funds. The first states:

- F. The annual distributions from the land grant permanent funds to the beneficiaries specified in the Ferguson Act and the Enabling Act shall be five percent of the average of the year-end market values of the land grant permanent funds for the immediately preceding five calendar years.

The second distribution was added by the 2022 amendment and provides, in pertinent part:

- G. In addition to the annual distributions made pursuant to Subsection F of this section, . . . an annual distribution of one and one-fourth percent of the average of the year-end market value of the *permanent school fund* for the immediately preceding five calendar years shall be made *as provided in Subsection H* of this section; . . .

- H. Unless suspended . . . , the additional distribution *from the permanent school fund provided for in Subsection G* of this section shall be as follows and as provided by law:

(1) forty percent of the additional distribution shall be for the public school permanent fund beneficiary for enhanced instruction for students at risk of failure, extending the school year and public school teacher compensation; and

(2) sixty percent of the additional distribution shall be for the provision of early childhood education.

- I. As used in this section, “early childhood education” means nonsectarian and nondenominational education for children until they are eligible for kindergarten.

N.M. Const. art. XII, § 7(G)-(I) (emphases added).

The distribution described in Article XII, Section 7(H)(1) above went into effect upon approval by New Mexico voters. Article XII, Section 7(H)(2), however, provides for a new use of the permanent school fund, which, as discussed below, the Enabling Act currently limits to support of the public schools. *See* Enabling Act, § 6. Section 3 of the Joint Resolution recognizes that Congressional approval is necessary for any amendment to the state constitution that would change the terms of the Enabling Act. *See* Enabling Act, § 2; N.M. Const. art. XIX, § 4; N.M. Const. art. XXI, § 10. On December 29, 2022, Congress passed Public Law 117-328 and consented to amendment of the Enabling Act of the New Mexico Constitution. *See* <https://www.congress.gov/117/plaws/publ328/PLAW-117publ328.pdf>. As such, the distribution for early childhood education in Article XII, Section 7(H)(2) went into effect on that date.

Analysis

A. NMMI is not entitled to a share of the additional 1.25% annual distribution from the permanent school fund provided in Article XII, Section 7(G).

NMMI is a beneficiary of the land grant permanent funds, *see* Enabling Act, § 7 (grant of land for “military institutes”), and receives a proportionate share of the annual distribution from the funds authorized under Article XII, Section 7(F). *See* NMSA 1978, § 19-1-17(B)(19) (2005) (including the “New Mexico military institute permanent fund” in the list of funds credited with a proportionate share of money derived from state lands). However, NMMI is not a common school within the meaning of Section 6 of the Enabling Act. NMMI’s entitlement to a share of the additional 1.25% distribution provided in Article XII, Section 7(G) depends on whether (1) the drafters of the 2022 amendment intended to include NMMI as a recipient and (2) the Enabling Act permits such a distribution.

1. The Intent of the Drafters of the 2022 Amendment

We first address the intent of the drafters of the 2022 amendment. The same rules used to determine the legislative intent underlying a statute apply to interpreting provisions of the state constitution. *See State ex rel. Richardson v. Fifth Jud. Dist. Nominating Comm’n*, 2007-NMSC-023, ¶ 17, 160 P.3d 566 (stating that the rules of statutory construction “apply equally to constitutional construction”). The principal goal of constitutional construction is to give effect to the intent of the provision’s drafters and “the voters of New Mexico who approved it,” *State v. Ameer*, 2018-NMSC-030, ¶ 9, 458 P.3d 390, “using the plain language of the [provision] as the primary indicator of legislative intent,” *State v. Gutierrez*, 2023-NMSC-002, ¶ 22, 523 P.3d 560; *see Starko, Inc. v. Cimarron Health Plan, Inc.*, 2005-NMCA-040, ¶ 12, 110 P.3d 526 (stating that effect must be given, “when possible . . . to the clear and unambiguous language of the constitutional provision”). In determining legislative intent, “contemporaneous documents, presented to and presumably considered by the [L]egislature during the course of enact[ing] a statute may . . . be considered.” *State ex rel. Helman v. Gallegos*, 1994-NMSC-023, ¶ 35, 117 N.M. 346.

Article XII, Section 7(G) provides for an additional annual distribution of 1.25% “of the average of the year-end market value of the *permanent school fund* for the immediately preceding five calendar years” (emphasis added), which is in contrast with Article XII, Section 7(F)’s distribution from “the land grand permanent funds.” Under Article XII, Section 7(A), the “permanent school fund” means “the permanent school fund described in Article 12, Section 2 of [the New Mexico] constitution.” Turning then to Article XII, Section 2, the permanent school fund consists of the proceeds of lands granted under the Enabling Act “for the support of common schools,” Enabling Act, § 6; *see id.* § 7 (providing that distributions from “the permanent school fund . . . shall be used for the maintenance of the common schools”), which are now referred to as public schools, *see Moses v. Ruszkowski*, 2019-NMSC-003, ¶ 12, 458 P.3d 406 (“During the early nineteenth century, public education was provided in public schools known as common schools.”). The proceeds of land grants covered by the Enabling Act may be used only for the purposes specified in the Act.

In other words, the additional 1.25% distribution provided for in Article XII, Section 7(G) is made from the permanent school fund and must, therefore, be limited to the support of public schools. Although Article XII, Section 7(H) does not repeat at every opportunity that the additional distribution is so limited, it does expressly state that “the additional distribution *from the permanent school fund provided for in Subsection G* shall be as follows *and as provided by law*.” (Emphases added.) The additional 1.25% distribution is then divided into “forty percent . . . for enhanced instruction for students at risk of failure, extending the school year and public school teacher compensation,” and “sixty percent . . . for the provision of early childhood education.” N.M. Const. art. XII, § 7(H)(1), (2).

Indeed, the purpose of Article XII, Section 7(H) is simply to provide further detail regarding the additional distribution identified in Article XII, Section 7(G). Any reading that expands the Article XII, Section 7(H) distribution beyond the permanent school fund would render the language in Article XII, Sections 7(G) and (H) superfluous and internally inconsistent, which reading we are to avoid. *See State v. Sinyard*, 1983-NMCA-150, ¶ 6, 100 N.M. 694 (stating that a “well-established principle of statutory construction is” to read the statute “as a whole,” to construe each

section or part “in connection with every other part or section so as to produce a harmonious whole,” and to “give effect to all provisions of a statute and to reconcile different provisions so as to make them consistent”).

Because NMMI is not a public school or otherwise a beneficiary of the permanent school fund, it is not included among the intended recipients of the additional distribution. As such, based on the language of Article XII, Section 7, NMMI is not an intended beneficiary of the additional 1.25% distribution.

2. Authorization Under the Enabling Act

Turning then to the question of whether the Enabling Act authorizes the allocation to NMMI of a share of the additional 1.25% distribution provided in Article XII, Section 7(G), we are further assured that NMMI is not an intended recipient of a portion of the additional distribution. As indicated above, the Enabling Act currently limits the use of the permanent school fund to the support of the common schools. Enabling Act, §§ 6-7. Article XII, Section 7(G), (H) expressly establishes an additional distribution from the permanent school fund. *See* N.M. Const. art. XII, § 7(G) (identifying an additional distribution from “the permanent school fund . . . as provided in Subsection H”); § 7(H) (setting forth how “the additional distribution from the permanent school fund” shall be made); § 7(H)(1) (providing that 40% percent of the additional distribution “shall be for the public school permanent fund beneficiary for enhanced instruction for students at risk of failure, extending the school year and public school teacher compensation”).

Thus, because the constitutional amendment establishes an additional distribution *from the permanent school fund*, because the Enabling Act limits use of the permanent school fund for the common or public schools, and because NMMI is not a common or public school as that term is used in the Enabling Act, we conclude that the Enabling Act does not permit a portion of the additional distribution to be made to NMMI. *See also* Fiscal Impact Report (FIR) H.J.R. 1, p. 2, 55th Leg., 1st Sess. (N.M. 2021) (available at nmlegis.gov) (explaining that because the amendment allows “the additional distribution to come only from the permanent school fund,” land grant permanent fund beneficiaries other than the public schools “will not receive increased distributions”).

B. NMMI is also not entitled to the distribution for early childhood education provided in Article XII, Section 7(H)(2).

The above reasoning also applies to the question of whether NMMI is entitled to receive a share of the 60% portion of the additional 1.25% annual distribution if NMMI provides for early childhood education. It is consistent throughout Article XII that public schools are the intended recipients of land grant permanent funds. The same is true for Article XII, Section 7(H)(2). There is no additional language that modifies the intended beneficiaries of the funds. Article XII, Section 7(H)(2) does not otherwise indicate that the 60% portion of the additional 1.25% annual distribution is intended to benefit an institution not otherwise designated to receive funds from the school permanent fund within the contemplation of Article XII or the 2022 amendment.

Moreover, it would not follow basic canons of constitutional construction to conclude that NMMI is not entitled to a portion of the additional 1.25% distribution because NMMI is not designated to receive funds from the school permanent fund, but that NMMI would somehow be entitled to a share of the 60% portion of the additional distribution simply by providing early childhood education services. *See Ameer*, 2018-NMSC-030, ¶ 9 (stating that the principal goal of constitutional construction is to give effect to the intent of the drafters and the “voters of New Mexico who approved it”); *Gutierrez*, 2023-NMSC-002, ¶ 22 (stating that plain language is the primary indicator of intent); *Starko, Inc.*, 2005-NMCA-040, ¶ 12 (stating that we must consider the “clear and unambiguous language of the constitutional provision[s]”). Accordingly, we conclude that NMMI is not authorized to receive a share of the 60% portion of the additional 1.25% annual distribution, regardless of whether NMMI offers early childhood education services, because NMMI is not an intended recipient of the permanent school fund described in Article XII, Section 2.

Conclusion

The additional 1.25% annual distribution authorized by the 2022 amendment is made from the permanent school fund, which contains trust lands granted under the Enabling Act and is dedicated to the support of public schools. Because NMMI is not a public or common school for purposes of the Enabling Act, NMMI is not a beneficiary of the permanent school fund and is not entitled to a share of the additional 1.25% annual distribution for public schools under Subsection H(1) or for early childhood education under Subsection H(2).

Please note that this opinion is a public document and is not protected by the attorney-client privilege. It will be published on our website and made available to the general public.

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/s/ Aletheia V.P. Allen
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