

April 20, 1955
Opinion No. 55-85

REQUESTED BY: Major General Frank E. Fraser
The Adjutant General, Arizona National Guard
747 West Van Buren
Phoenix, Arizona

OPINION BY: ROBERT MORRISON, The Attorney General
Norman E. Green, Assistant Attorney General

QUESTION: May State funds appropriated for improvements be expended on property leased for twenty years for the purpose of black top paving, the life expectancy of which is ten years?

CONCLUSION: Such an expenditure of money for an improvement on leased land would be proper.

Section 64-903, A.C.A., 1939, 1952 Supplement, entitled "Powers and duties" (of the Adjutant General), subsection (c), provides as follows:

"(c) The adjutant general shall have power, with the approval of the governor to: Enter into contracts with any individual, the state, its political subdivisions or any agency thereof, the federal government or any agency thereof, for the purchase, acquisition, rental or lease of lands, buildings or military material, and take title thereto in the name of the state, and for the establishment and maintenance of armories, subject to appropriation by the legislature of state funds, if any required by any such contract; * * * "

From the above section, it can be clearly seen that the Adjutant General has the express power to contract for the lease of any lands or buildings used for the purposes of the National Guard.

The express power to acquire land by means of a lease necessarily implies the power to improve such land, in order to allow such land to provide the maximum of the utility for which it was so obtained. 67 C.J.S. B. Authority and Powers, § 102, at 368 provides:

"In addition to powers expressly conferred on him by law, and officer has by implication such powers as are necessary for the due and

N. GREEN
Kersting
Hughes

Maj. Gen. Frank E. Fraser
Arizona National Guard

April 20, 1955
Page Two

efficient exercise of those expressly granted, or such as may be fairly implied therefrom. Acts may be done within the scope of official authority without being prescribed by statute It is sufficient that such acts are done by an officer with respect to matters committed by law to his control or supervision, or that they have more or less connection with the general matters committed by law to his control or supervision, or that they are governed by a lawful requirement of the department under whose authority the officer is acting."

It is, therefore, the opinion of this office that the National Guard, acting through the Adjutant General, has the power to expend moneys to pave an area of land leased from the City of Yuma for the purpose of the National Guard's use, especially when the term of the lease consists of a period of twenty-five years and the life of the proposed improvement will last only ten years.

ROBERT MORRISON
The Attorney General

Norman E. Green
NORMAN E. GREEN
Assistant Attorney General

llm

55-85