



January 25, 2024

The Honorable Senator George K. Munoz
P.O. Box 2679
Gallup, NM 87305

VIA ELECTRONIC MAIL TO: george.munoz@nmlegis.gov

In Re: Opinion Request – Santa Fe Soldier’s Monument, a/k/a the “Plaza Obelisk”

Dear Senator Munoz,

We are in receipt of your December 12, 2023, request for an Attorney General opinion regarding the legal status of the Plaza Obelisk that was removed during a recent public protest, as well as its current whereabouts. Please allow this correspondence to serve as this office’s response to your inquiry.

First, regarding the legal status of the Obelisk, it was commissioned before statehood. The Territorial Legislative Assembly, a federal entity created in 1850 by the Organic Act Establishing the Territory of New Mexico, commissioned the monument in 1867 to honor New Mexico soldiers who fought in the Civil War. The Soldiers Monument was constructed in 1869. At that time, the monument and the land supporting it belonged to the Federal Government.

You have asked about current ownership of the Obelisk. Our office issues opinions on “question[s] of law.” NMSA 1978, § 8-5-2(D) (1975). However, our office is not an adjudicative body, and we do not resolve factual disputes that may be resolved by a court. With that in mind, we are not aware of any judicial determination of ownership of the obelisk, and we are not in a position to adjudicate the issue.

Ownership may lie with the City of Santa Fe. On February 16, 1901, the Federal Government issued a patent granting lands to the City of Santa Fe, which was properly filed in the office of the territorial precursor to the County Clerk on March 8, 1901 (see attached). In the grant, the United States reserved specific facilities and lands to itself but did not reserve the Soldiers Monument and land to which it is appurtenant in the list of reserved property, or any equivalent description. In fact, the grant specifically mentioned the Soldiers Monument as the point of reference for measuring the size of the land grant.

The Obelisk is the subject of current litigation in the case of *Union Protectiva v. Webber & the City of Santa Fe*, No. D-101-CV-2021-01373. We have reviewed the complaint filed by the plaintiff in that matter, which asserts that the Obelisk is subject to the provisions of the New Mexico Prehistoric and Historic Sites Preservation Act. The complaint does not explicitly allege

that the City owns the Obelisk. However, the original complaint alleged that the City “must repair and restore the Obelisk” (Compl. ¶ 60), and the City admitted in its answer to the first amended complaint that the “Obelisk was funded by the Legislative Assembly of the Territory of New Mexico in the 1860s . . . and has stood within the Plaza.” (Answer ¶ 23) These allegations are consistent with City ownership under the federal land grant to the City.

We are not aware of any federal claim of ownership of the monument since the issuance of the patent in 1901. We are also not aware of any official claim of ownership by the State or any transfer of ownership from the City to the State. Upon receipt of your request, we contacted an employee of the General Services Department, and the employee raised a question about possible state ownership without directing our office to any authority that would support such a claim. Absent a definitive determination of ownership by a court, however, we refrain from drawing any final conclusion about current ownership.

As to the Obelisk’s current whereabouts, the City Attorney’s Office informed us that it is in a secure, undisclosed location for security reasons based on the concern that further harm may come to it. Requests for access to and the location of the Obelisk may be directed to City Attorney Erin McSherry.

Attorney General opinion requests are public documents. We consider this response to be a public document, as well. Please let us know if we may be of further assistance on this matter.

Sincerely,

Daniel R. Rubin

Daniel Ross Rubin
Assistant Attorney General
Government Counsel and
Accountability Division