

Opinion No. 46-4939

August 13, 1946

BY: C. C. McCULLOH, Attorney General

TO: C. R. Sebastian State Comptroller Santa Fe, New Mexico

{*263} We are in receipt of your letter of August 10, 1946, in which you ask several questions. Your first question is as follows:

"The Municipal Board has made it a practice to furnish free water to all religious organizations within the city limits. The municipality owns the waterworks. The question raised is whether or not the council has jurisdiction to permit this commodity to be furnished gratis."

Your attention is directed to Article 9, Section 14 of the Constitution, which is as follows:

"Neither the state, nor any county, school district, or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit, or make any donation to or in aid of any person, association or public or private corporation, or in aid of any private enterprise for the construction of any railroad; provided, nothing herein shall be construed to prohibit the state or any county or municipality {*264} from making provision for the care and maintenance of sick and indigent persons."

In answer to your question, it appears that the giving of water by the city of Las Cruces to a religious organization would be the making of a donation to such organization. In view of the above quoted section of the Constitution, it is my opinion that the city council has no such jurisdiction.

Your second question is as follows:

"The Municipal Board has also allowed water as charity in indigent cases. The auditor raises the question as to the use of this commodity for charity purposes in view of the fact that the General Fund of the city carries an item for charity. This office wishes to make the observation that the City could pay for the water out of its charity fund or set up a charity fund in the Water Department in order to keep an accountability of the water used for this purpose. The auditor questions the authority of the council to use the utility commodity for charitable purposes."

I find no statutory or constitutional prohibition against the granting of free water to indigents. In view of the broad charitable powers given municipalities, it is my opinion that either one of the suggestions made by you could be legally followed.

Your third question is as follows:

"It has been the practice of the municipal council to vote the incoming Board free water, and gas at a reduced rate of actual cost, in lieu of compensation authorized by law. The auditor questions the legality of this practice, in view of the fact that the law definitely provides for compensation to the members of the municipal council."

While the giving of water to councilmen might be considered payment for their services, and so not a violation of the above quoted provision of the Constitution, yet Section 14-1607 provides as follows:

"No mayor, trustee, or alderman shall receive any compensation for his services as trustee or alderman, except as provided by law."

No provision is made by law authorizing cities to give free water to council members or reduce gas rates. It is therefore my opinion that a city council has no such authority.

By ROBERT W. WARD,

Asst. Atty. General