

Opinion No. 49-5204

March 31, 1949

BY: JOE L. MARTINEZ, Attorney General

TO: Honorable Thomas J. Mabry Governor of New Mexico Santa Fe, New Mexico

{*30} This is in response to your request for an opinion of this office as to whether or not the State Board of Finance may use moneys under its control to provide funds for the charitable institutions and hospitals which are now without state aid due to the failure of passage of House Bill No. 254.

House Bill No. 254, which died in the Senate, made appropriations for the various charitable institutions and hospitals for which appropriations were made by the Legislative Assembly of 1909. This bill is in conformity with Section 31 of Article 4 of the Constitution of New Mexico, which provides as follows:

"No appropriation shall be made for charitable, educational or other benevolent purposes to any person, corporation, association, institution, or community, not under the absolute control of the state, **but the legislature may, in its discretion make appropriations** for the charitable institutions and hospitals, for the maintenance of which annual appropriations were made by the Legislative Assembly of nineteen hundred and nine." (Emphasis Ours.)

The above cited section prohibits aid for charitable, educational or other benevolent purposes with the sole exception of aid for those institutions for which appropriation was made by the Legislature in 1909. This section, however, goes further and provides that the Legislature may make such appropriations **in its discretion**.

It is the opinion of this office that by failing to pass House Bill No. 254, the Legislature exercised its discretion and since only the Legislature may make such an appropriation and since the Legislature through the exercise of its discretion did not make such an appropriation, any payments made by the Board of Finance to these institutions would be in violation of Section 31 of Article 4 and also in violation of Section 14 of Article 9 prohibiting donations to any person, association or public or private corporation.

While it is regrettable that the appropriation for these institutions was not made by the Legislature, our Constitution forbids any aid to such institutions except by legislative appropriation.

I might suggest that the institutions in question consider the possibility of attempting to borrow the necessary money at the present time with the thought in mind of asking the 20th Legislature for a deficiency appropriation in lieu of the appropriation overlooked by the 19th Legislature.