

## Opinion No. 49-5237

August 8, 1949

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** Murray A. Hintz, Director Department of Public Welfare Santa Fe, New Mexico

{\*73} I have your letter of August 3, 1949, wherein you enclose a proposed agreement between the New Mexico Department of Public Welfare and the charitable institutions for whom the Legislature was authorized to make appropriations under Article 4, § 31 of the Constitution of New Mexico but who failed to receive an appropriation from the last session of the Legislature.

You state that the Legislature's oversight has been much concern to your department as these organizations render services to the Department and its clients. The proposed agreement which you enclose provides for a loan to each institution in the amount of the funds which the Legislature might constitutionally appropriate for that institution. The agreement further provides that the Department shall pay the institution its regular charges for services currently rendered from the date of the execution of the agreement until March 10, 1951. In consideration for this loan the institution agrees to render efficient service to the Department and to the public generally upon payment of regular charges therefor. If after March 10, 1951, the Department has been repaid the amount loaned, the agreement ceases. If the amount loaned is not repaid by that time the institution agrees to furnish such services as may from time to time be required by the Department and to charge those services to the amount of the loan until the loan has been fully repaid.

You ask whether this proposed agreement will violate any constitutional provision concerning donations. Constitutional provisions prohibiting donations are found in Article 4, Sec. 31 and Article 9, Sec. 14 of the Constitution of New Mexico. Article 4 relates to the Legislature and the prohibitions thereunder are prohibitions directed to the Legislature only and therefore Sec. 31 of said Article would not be applicable to the agreement in question. Article 9, Sec. 14 prohibits the state from directly or indirectly lending or pledging its credit or making any donations to or in aid of any persons, association, or public or private corporation and further provides that it shall not be construed as to prohibit the state from making provision for the care of sick and indigent persons. The above described agreement does not constitute a donation since reimbursement is unquestionably guaranteed. It may be characterized as an advance payment to insure the performance of necessary services to the Department of Public Welfare by furnishing to the institutions involved sufficient operating capital to maintain an efficient institution. Neither does it appear to constitute a loan or pledge of the credit of the state. Even if it could be said that the agreement involves a loan or pledge of the credit of the state, or a donation, its purpose is to make provision for the care of sick and indigent persons and it is therefore exempt from the provisions of this section.

From the foregoing it is the opinion of this office that the proposed agreement between the Department of Public Welfare and the charitable organizations for whom the 19th Legislature failed to make appropriations is legal {\*74} and not in violation of the constitutional provisions concerning donations.