

Opinion No. 51-5380

June 20, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Mrs. Florence E. Morrison Secretary-Treasurer New Mexico Insane Asylum Board of Directors Las Vegas, New Mexico

Re: Quiet Title Suit No. 14656 Civil Docket -- District Court San Miguel County

OPINION

{*65} In reply to your letter of June 9, 1951, in which you requested an opinion as to the present status of the title of 78.50 acres of land {*66} formerly conveyed by the New Mexico Insane Asylum to the City of Las Vegas for park and municipal purposes, and by the City of Las Vegas to the American Legion Leonard Hoskins Post No. 24; and also as to whether the Board would have authority to convey by quit claim deed, or otherwise, any interest that the New Mexico Insane Asylum might have in the property and whether it would be to the best interest of said New Mexico Insane Asylum.

On March 27, 1950, Mr. Henry Blattman filed suit to quiet title in the above entitled case. The then directors of the New Mexico State Hospital requested us to answer the suit, which we did. We filed an answer and a counter claim. We discovered that the directors of the New Mexico Insane Asylum executed a quit claim deed on December 18, 1935, to the City of Las Vegas for the 78.50 acres with the following proviso:

"UPON CONDITION, NEVERTHELESS, That said tract of land shall be entered upon, improved and used by the City of Las Vegas, New Mexico, for City Park and other municipal purposes within a period of one year from the date hereof, and thereafter shall be continuously so used by the City of Las Vegas, and on failure of which said tract or any portion or portions thereof not so used shall revert to the Grantor."

We also found that the City of Las Vegas failed within one year from the date of said quit claim deed to convert the area of 78.50 acres into a city park, or use it for any other municipal purposes. We also had the information that less than 30 acres of said property had been developed by the City of Las Vegas for a city park, or other municipal purpose. At a date unknown to the directors of the New Mexico State Hospital, but at a time more than one year after December 18, 1935, the City of Las Vegas conveyed its interest in the above described property to the American Legion Leonard Hoskins Post No. 24, Inc., a corporation. We also had the information that the property was to be turned over to private interests for the developing of a housing project.

We seriously doubt that the then directors of the New Mexico Insane Asylum, in 1935, had the right to donate this property to the City of Las Vegas, under Art. 9, Sec. 14 of the New Mexico State Constitution which reads 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 rail road; provided, nothing herein shall be construed to prohibit the state or any county or municipality from making provision for the care and maintenance of sick and indigent persons."

You will note that this constitutional provision is a direct prohibition against the donation of any property or money to any person, association or public or private corporation, or in aid of any private enterprise for the construction of any railroad by any State institution. However, since the Board of Directors did convey this property under certain conditions, it is our position now that the City of Las Vegas did not comply with the proviso in said quit claim deed and, therefore, breached the condition of said deed and that since that proviso further provided that in case the city did not use this land for a park or other municipal purpose within a year, that it would revert back to the hospital.

It is my contention that the title to this 78.50 acres has reverted to {*67} the Directors of the New Mexico Insane Asylum and that they are now the holders to the title to said 78.50 acres.

At the time that we filed the answer and cross complaint, Mr. Blattman informed me that if we were going to fight the case, he would dismiss it. However, he has not done so but we are ready to go to court at any time that he has the case set to answer for the State Hospital.

It is, therefore, my opinion that the City of Las Vegas breached the proviso in the quit claim deed which was given by the directors of the New Mexico Insane Asylum by not complying with the same within the one-year period, and that the City had no authority to convey the land to the American Legion Leonard Hoskins Post No. 24 and the present Board of Directors, New Mexico State Hospital, has no authority to convey by quit claim deed, or otherwise, any interest that the New Mexico State Insane Asylum might have in the property and it certainly would not be to the best interests of the New Mexico Insane Asylum.

The New Mexico Insane Asylum could sell this property under proper procedure but not donate it as it would be a violation of Article 9, Section 14 of the New Mexico Constitution as hereinabove set forth.

Trusting that this fully answers your inquiry, I remain