

## Opinion No. 51-5427

September 25, 1951

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

**TO:** Mr. Floyd Santistevan Assistant Superintendent of Public Instruction Santa Fe, New Mexico

{\*133} Some time ago you forwarded a letter from Charles S. Owens, Superintendent of the Gallup Public Schools, requesting an opinion from your office. Mr. Owens stated that the Gallup Municipal Board of Education wished to get a clear legal title to a parcel of land which was originally donated to the city by Mr. George Bubany, with a stipulation that it be used for city park purposes. Mr. Owens mentioned that the city has never used the land for such purposes and that the city now desires the School Board to have the land. I understand that Mr. Bubany will sell his reversionary interest for \$ 7,500., which sum he plans to donate to the Gallup Parochial Schools.

In my opinion, the Gallup Board of Education may properly acquire legal title to this land in either of two ways:

1. The City of Gallup could pass a resolution to the effect that inasmuch as it has never been able to meet the stipulation of the original conveyance from Bubany that the land be used for park purposes, it now wishes to surrender its interest in the land to Mr. Bubany. After the surrender has been made, the School Board could then purchase a quitclaim deed from Mr. Bubany for \$ 7,500. It is my opinion that a surrender may properly be made to one with a reversionary interest such as Mr. Bubany possesses. In the case of surrender, consideration is not required.

2. The City of Gallup could quitclaim its interest to the Board of Education for \$ 1. and "other good and valuable consideration". This deed should be authorized by {\*134} proper resolution of City Council. The Board could then purchase from Br. Bubany his reversionary interest for \$ 7,500.

It has been suggested that the city could merely donate its present interest in the land to the board. In my opinion, however, such a donation might well be in contravention of Article 9. Section 14 of the State Constitution. At least two New Mexico decisions have held that City Boards of Education are "Municipal Corporations" (See 9 N.M. 441 and 9 N.M. 588), and the Constitution prohibits any such donation to a "public corporation." For this reason I have suggested the two alternative procedures discussed above.

I hope that this opinion answers sufficiently your questions on this matter.