

## **Opinion No. 52-5577**

August 13, 1952

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

**TO:** Charles G. Sage Brigadier General The Adjutant General Santa Fe, New Mexico

{\*285} This is in reply to your inquiry of June 24th in which you raise certain questions with regard to the legal status of the Civil Air Patrol appropriations provided by our Legislature in 1949 and again in 1951.

Chapter 147 of the Laws of 1949 in Section 1 thereof creates a New Mexico Department of Civil Air Patrol; however, the subsequent sections make no reference whatsoever to the "Department" of Civil Air Patrol. Those subsequent sections appropriate money for the New Mexico "Wing" of the Civil Air Patrol, and provide for the expenditures of the funds provided upon vouchers to be signed by the Commander of the New Mexico "Wing" of the Civil Air Patrol.

The 1951 appropriation is contained in the appropriation item for the Adjutant General's office and provides merely for \$ 5,000.00 for each of the fortieth and forty-first fiscal years for the "Civil Air Patrol."

The New Mexico Wing of the Civil Air Patrol is our State chapter or branch of the Civil Air Patrol, which is a congressionally chartered corporation with limited powers. The enabling legislation for this corporation states in part:

"The corporation shall have no power to issue capital stock or engage in business for pecuniary profit or gain, its objects and purposes being solely of a benevolent character and not for the pecuniary profit or gain of its members." (July 1, 1946, Ch. 527, § 4, 60 Stat. 347).

Had our Legislature appropriated the funds as it did to the New {\*286} Mexico "Wing" of the CAP without having previously established the New Mexico Department of CAP in the same legislation, such an appropriation would have been directly contrary to the provisions of our Constitution. Section 31 of Article 4 of the New Mexico Constitution says:

"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, . . ."

A precise and literal reading and interpretation of the 1949 enactment would require a finding that the Legislature had appropriated moneys for the local chapter of a national benevolent organization which would be as unconstitutional as an appropriation to local units of the American War Mothers, The Boy Scouts of America, Daughters of the

American Revolution or the American Legion, or such other organization, all of which are chartered by the Congress in a manner and mode and with a grant of power similar to the Civil Air Patrol.

The creation of the New Mexico Department of CAP in the 1949 Act is, however, a clear expression of the legislative intent to bring into creation a state department and to give state sponsorship to New Mexico CAP activities. Further, I believe the intent of the Legislature was clearly to provide funds for the New Mexico Department of the CAP in spite of their language appropriating such moneys to the New Mexico Wing.

The courts are uniformly liberal in interpreting statutory enactments so as to sustain them as to constitutionality. It is my opinion that our New Mexico courts would hold the 1949 enactment to be a legitimate and constitutional appropriation of state funds.