

Opinion No. 53-5820

September 29, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable Edwin L. Mechem Governor of New Mexico Santa Fe, New Mexico

{*229} In your letter dated September 15, 1953, which was only received in this office September 22, 1953, you inquire whether the Eastern New Mexico State Fair Board may legally be given a grant of money from the State Board of Finance Emergency Fund in view of Section 18, Chapter 156, Laws of 1953.

The Eastern New Mexico State Fair was created by Chapter 6, Laws of 1931, appearing as § 48-2122 of the 1941 Compilation. The organization was created by statute. It is under control of the Legislature, but is not under absolute control of the State of New Mexico, Chaves County having some obligations and control under the statute.

In 1947, the Legislature created the Bi-State Fair in Curry County pursuant to Chapter 152, Laws of 1947, appearing as § 48-2124 of the 1941 Compilation, pocket supplement. The language used in creating the Bi-State Fair is the same as that used in creating the Eastern New Mexico State Fair except for the location in different counties. Relative to the Bi-State Fair, the Legislature authorized the Board of County Commissioners of Curry County to issue bonds for the erection of buildings at the Fair Grounds and declared that such buildings are necessary public buildings of the County. In view of that fact, it seems to follow that the Eastern New Mexico State Fair would also be considered a county agency of Chaves County, and not fully controlled by the State.

Article 4, Section 31, of the New Mexico Constitution, reads 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."

In *Harrington v. Atteberry*, 21 N.M. 50, 153 P. 1041, a law authorizing counties to appropriate county funds to the San Juan County Fair Association, a domestic corporation was involved. In holding that the appropriation {*230} by the county could not be made, a majority of the court ruled that such a use would be for charitable, educational or other benevolent purposes, but since the Fair Association was not under the absolute control of the State, the same would violate Article 4, Section 31. See *Hutcheson v. Atherton*, 44 N.M. 144, at page 156-7.

Section 18 of Chapter 156, Laws of 1953, being the General Appropriations Act, provides as follows:

"No funds shall be allocated by any state administrative body to any state department, institution, board, commission or other agency created by statute for which no appropriation has been made by the Twenty-First Legislature."

This prohibition, hereinabove quoted, applies to any state agency created by the Legislature and, since no appropriation was made for this particular agency, namely, The Eastern New Mexico State Fair, such an advance of funds or appropriation would be in direct violation of this prohibition.

It is, therefore, our opinion that a grant of money from the State Board of Finance Emergency Fund cannot be made to the Eastern New Mexico State Fair Board since it violates the provisions of Section 18 of Chapter 156, Laws of 1953, or the provisions of Article 4, Section 31, of the Constitution.

It perhaps may also be noted that Article 9, Section 14, prohibits the State, any county school district, or municipality from making any donation to or in aid of any person, association or public or private corporation except as otherwise provided in the Constitution. We also feel that this section would be violated since Article 4, Section 31, would constitute another provision of the Constitution not authorizing such appropriations for such purposes when the organization is not under the absolute control of the State.

Trusting this satisfactorily answers your inquiry,

By: Hilario Rubio

Assist. Attorney General