

Opinion No. 55-6223

July 11, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. D. M. Smith, Jr., State Comptroller, State Capitol Building, Santa Fe, New Mexico

In your letter of June 24, 1955, you ask whether the City of Albuquerque may legally make a contribution to Aqualantes, Inc., for the furtherance of the aims and purposes for which this organization was organized, and whether the City of Albuquerque may maintain a membership in this organization, paying a fee therefor. You enclose with your request an opinion of the City Attorney of Albuquerque concerning this matter.

We believe that your questions are answered by the decision of our Supreme Court in **Hutcheson vs. Atherton et al**, 44 N.M. 144, 99 P. 2d 462. There the Court was considering the constitutionality of an act authorizing the erection of auditoriums for use by the Fourth Centennial Coronado Corporation, and subsequent use as public buildings generally. The Court held that the issuance of such bonds would be in violation of Article 9, Section 14 of the Constitution of New Mexico, which provides 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 railroad; 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."

In the Hutcheson case, the Court held that it is not a question of whether the contribution is for a public purpose or not, but whether the payment made is a donation to or in aid of any person, association or public or private corporation. If we assume that Aqualantes, Inc., is serving a public purpose, this is still not sufficient. The question is whether the contribution proposed to be given by the City of Albuquerque is in aid of this corporation. We believe that there can be no question as to this, for if it were not the contribution would not be offered or desired. We must therefore conclude that it is improper for the City of Albuquerque to contribute money to this organization or to maintain a dues paying membership in it.

This opinion, however, need not prevent the City of Albuquerque, in other ways, from doing its share towards securing the passage of legislation concerning Colorado River Development. It is obvious that the passage of pending legislation before Congress is of the utmost interest to the City of Albuquerque, and of the entire State. Monies spent for the purpose of assisting the passage of this legislation would certainly be a proper

municipal expenditure. However, the money must be spent directly and not through a private organization with similar aims.

By: Walter R. Kegel

Assistant Attorney General