

Opinion No. 56-6372

January 27, 1956

BY: RICHARD H. ROBINSON, Attorney General

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

We have your letter of January 18 in which you request an opinion from this office as to whether the Village of Cloudcroft can construct a City Hall and Fire Station upon a lot in the Village of Cloudcroft where the deed of conveyance will contain the following restriction:

"That such premises or any part thereof shall never be used for purposes of trade or commerce, boarding houses and hotels excepted."

We are of the opinion that the construction of a combined City Hall and Fire Station would not violate the restriction "for purposes of trade or commerce."

As was pointed out in *Neff v. Hendricks*, 57 N.M. 440, 259 P.2d 1025, where the Supreme Court was construing this particular provision, the purpose of this restriction was to create a village free from commercial enterprises. Purposes of trade or commerce mean businesses being carried on for profit by individual owners. Certainly the carrying on of the municipal functions from a City Hall and Fire Station would not come within the idea of trade or commerce. The functions of a city are not for profit and, therefore, would not come within the above provisions.

For these reasons, we are of the opinion that the construction of this combined City Hall and Fire Station would not violate the restrictions placed in all deeds in the Village of Cloudcroft.

Trusting we have answered your question, we remain

By: Paul L. Billhymer

Assistant Attorney General