

Opinion No. 56-6550

November 28, 1956

BY: RICHARD H. ROBINSON, Attorney General

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

In reply to your letter of October 22, 1956, in which you raise the following question:

"Would the Village of Deming, by entering into a contract to contribute \$ 200.00 a month for the upkeep of the Rio Mimbres Country Club, in return for which the golf course will be open to the general public, be violating Section 14, Article IX, of the New Mexico Constitution?"

the following is submitted for your consideration.

In reading § 14, Article IX of the New Mexico Constitution, it is apparent that the intent was to prevent the giving of outright "grants" or the use of the city's credit by and for those who would not be entitled to get or receive credit in the first instance, and further act as a curb on speculative ventures prevalent at the time of its adoption.

This section, however, would not apply to an instance where a municipality enters into a contract wherein the consideration that comes to the municipality is for the benefit of the city and its citizens.

As is pointed out at 64 C.J.S., page 427, "such constitutional provisions should be construed with reference to the evils they were intended to correct", and should not be used as an instrument to deter proper governmental action.

In this connection, at § 14-21-1, N.M.S.A., 1953 Compilation, is found a general grant of municipal authority setting forth as a goal the general benefit and welfare of the public.

Finally, attention is directed to the case of the Village of Deming v. The Hosdreg Co., Inc., Advance Report No. 6023, November 20, 1956, wherein the Court considered the question of violation of Article IX, § 14, and pointed out in regards to the giving to private enterprises, etc.:

"We think it fair to say from a review of the cases cited dealing with the term 'donation' as found in this proviso of the Constitution, that the word has been applied in its ordinary sense and meaning, as a 'gift', an allocation or appropriation of something of value, **without consideration** to a 'person, association or public or private corporation.'" (Emphasis supplied.)

Thus, it is the opinion of this office that such a contract, for a consideration and as herein described, does not violate Article IX, § 14, of the New Mexico Constitution.

Trusting we have fully answered your inquiry, we remain

By Harry E. Stowers, Jr.

Assistant Attorney General