

Opinion No. 61-84

September 11, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General F. Harlan Flint, Assistant Attorney General

TO: Al Valenzuela, County Clerk, Office of the Grant, County Clerk, P.O. Box 898, Silver City, New Mexico

QUESTION

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An emergency ambulance service firm has proposed that Grant County assume the responsibility of reimbursing the firm for all bills which are uncollected. Could this agreement legally be entered into by the county?

CONCLUSION

No.

OPINION

ANALYSIS

According to the information provided us by correspondence, Curtis Mortuary, Inc., is the only business providing emergency ambulance service in Grant County. The firm has recently advised the County Commission that it does not propose to continue such services unless it can be indemnified for financial losses sustained by reason of uncollectible emergency ambulance accounts. Mr. Curtis has proposed an agreement between his firm and the county whereby the firm will endeavor to collect all accounts. However, pursuant to this agreement, the county would be required to reimburse the firm for all accounts which they have been unable to collect after 60 days have passed. You have asked whether the county may legally enter into this agreement.

It is the opinion of this office that the proposed agreement would violate Article IX, Section 14, New Mexico Constitution, which declares in part 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 . . . ; 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."

The agreement herein considered contemplates a donation of public funds to a private firm in violation of the above constitutional provision. Since under the proposed agreement there need be no showing that the services are provided to sick and indigent residents of the county, the arrangement does not come within the exception contained in the last phrase of Article IX, Section 14, above. We believe, however, that it is legally possible to make an arrangement whereby the county in the legitimate exercise of its health and welfare powers could provide this type of service to sick and indigent residents of the county.

The same problem with which you are confronted has been of concern to other counties and municipalities around the State. The City of Albuquerque and Bernalillo County have entered into an agreement with the ambulance services in the locality, which appears to have remedied this problem in a manner that we feel is consistent with the constitutional mandate. Both the city and county contribute to a common fund which is used to make payments to the participating ambulance services to cover the expense of the service which is provided to sick and indigent persons who are residents of the city or the county. The participant ambulance services are required to make a periodic accounting to the city and county listing the names and addresses of sick and indigent persons who have been recipients of the service. In this manner the city and the county are able to determine that the funds are used solely to satisfy ambulance service accounts incurred by qualified residents of the city and county. It is our view that by restricting the use of public funds to the satisfaction of this type of account the local officials have brought themselves within the terms of the constitutional provision which permits counties and municipalities to make provision "for the care and maintenance of sick and indigent persons."