

Opinion No. 64-53

April 23, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General J. Forshaw Rosenthal,
Assistant Attorney General

TO: Mr. Alex J. Armijo, State Auditor, State Capitol Building Santa Fe, New Mexico

QUESTION

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1. Can the City of Las Cruces as owner of the Las Cruces Natural Gas System, in order to promote the use of natural gas and compete with other utilities, give credits of \$ 12.50 to \$ 50.00 to customers if they install a new gas water heater, change to a gas water heater from another type of water heater or replace the existing gas water heater with a new gas water heater?

CONCLUSION

Yes.

OPINION

ANALYSIS

As stated in your letter of request, the City of Las Cruces owns the natural gas system and the City Commission in passing Resolution 62-63 expects benefits to accrue to the City in the form of additional revenues from continued consumption of gas as a result of the conversion to, replacement, or initial installation of gas using appliances.

The possible objections to this practice arise under the conditions imposed by Article IX, Section 14 of the New Mexico Constitution which prohibits municipalities either directly or indirectly lending aid or credits to any person, association or corporation and Section 14-39-12, N.M.S.A., 1953 Compilation which governs the establishment of rates for services rendered by municipally owned public utilities.

The objection under Article IX, Section 14 was settled by the Supreme Court in **Deming v. Hosdreg Company**, 62 N.M. 18, 303 P. 2d 920. In that case it was questioned whether the constitutional prohibition prevented the village of Deming from issuing bonds for the purpose of acquiring industrial sites for sale or lease to industries wishing to locate in the area. The court in stating that it was not a violation said at page 28:

"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'."

In this instance, there has been no donation by the city of Las Cruces to the individuals installing new gas equipment. The city is getting something in return, i.e. increased consumption of gas, which they otherwise would not have.

Section 14-39-12, N.M.S.A., 1953 Compilation provides:

"It is hereby made mandatory upon governing bodies of municipalities issuing public utility revenue bonds, under the provisions of this act, to establish such rates for services rendered by such utility as will create an income sufficient to pay all reasonable expenses of operation and create a net revenue which shall be sufficient to pay interest coupons on said revenue bonds as they shall mature, and to provide a sinking fund which shall be adequate to discharge said bonds as and when they shall mature, and it shall be their duty to maintain such rates continuously until such bond issue has been fully liquidated. In the event of their failure or refusal to do so, each and all the members of said governing body shall be liable. . ."

The rates charged by the Las Cruces Gas System, after any credits are deducted, must be sufficient to meet the statutory requirement of paying all expenses of operation. If this is done, there is no objection to the proper authority making reasonable and non-discriminatory credits to users.

The credits allowed for the installation of gas using heaters contribute to the increased consumption of gas, subsequently benefiting the community through more efficient and profitable operation of the city owned utility. The credits operate uniformly upon all in the community and are not so great as to be unreasonable or discriminatory. As long as the city utility can meet its expense of operation, this type credit may be extended.