

## **Opinion No. 67-149**

December 29, 1967

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** E. H. Williams, Jr., District Attorney Third Judicial District Courthouse /- Second Floor Las Cruces, New Mexico

### **QUESTION**

#### **FACTS**

Dona Ana County presently holds title to certain real property within the county upon which is located a Dog Pound operated by the Dona Ana County Humane Society, a charitable non-profit private organization. The Humane Society has a source of revenue available to it contingent upon its ownership of that real property. The County Commissioners have been requested to convey the property to the Humane Society so that they may be eligible for this source of revenue.

#### **QUESTIONS**

1. Can the County convey this property to the Humane Society without receiving consideration?
2. If no conveyance can be made without consideration, would nominal consideration, such as \$ 10.00, be sufficient to justify the conveyance?
3. If neither of the foregoing methods can be accomplished, what basis should the County use to determine the amount of consideration to be paid in exchange for the subject property?

#### **CONCLUSIONS**

1. No.
2. No.
3. See analysis.

### **OPINION**

{\*239} **ANALYSIS**

The legislature has granted the counties of this State the authority to sell and convey real property owned by the county. Section 15-36-1, N.M.S.A., 1953 Comp., provides in pertinent part as follows:

"Each organized county in this state shall be a body corporate and politic, and as such shall be empowered for the following purposes:

\* \* \*

To sell and convey any real or personal estate owned by the county and make such order respecting the same as may be deemed conducive to the interests of the inhabitants.

The legislature did not, however, specify the manner or procedures to be followed in accomplishing the sale of the counties' real property.

Article IX, Section 14, New Mexico Constitution, does however, prohibit the county from donating this property to the Humane Society. The pertinent language of Art. IX, Sec. 14, reads as follows:

"Neither the state, nor any county \* \* \* except as otherwise provided in this Constitution, shall directly or indirectly \* \* \* make any donation to or in aid of any person, association or public or private corporation \* \* \*."

In view of this constitutional provision, we conclude that any transfer of the real property in question as proposed in your questions 1 and 2 would be violative of that section.

We next turn to the amount of {*\*240*} the consideration which the County should receive for a valid exchange of the subject property. The Board of County Commissioners is the approving authority for the sale of county property. Section 15-37-1, N.M.S.A., 1953 Comp. The case of **Butler County, Mo. v. Campbell**, 353 Mo. 413, 182 SW 2d 589 (1944), discusses the duties and obligations of county officials who are vested with the authority to sell county property. It was there stated:

"The county officials are trustees for the people within the county. As such, they are required to act with reasonable skill and diligence, and to discharge their duties with that prudence, caution and attention which careful men usually exercise in the management of their own affairs."

Applying this standard to the situation at hand, in conjunction with Art. IX, Sec. 14, supra, we hold that the subject property can only be sold for at least an amount having some reasonable relation to the value of the property.

By: David R. Sierra

Assistant Attorney General