

Opinion No. 67-29

February 16, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Senator C. Fincher Neal and the Eddy County Delegation Legislative-Executive Building Santa Fe, New Mexico

QUESTION

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1. Can a city or county appropriate public funds for economic development of city or county and have the funds used by a non-profit corporation formed for this purpose.
2. If the answer to the above question is "no", can a city or county appropriate funds for economic development and spend them under the authority of the county commission or city council, whatever the case may be?
3. If the above is possible, do we need enabling legislation to carry this into effect?

CONCLUSIONS

1. No.
2. Yes, but see Analysis.
3. Yes.

OPINION

{*35} ANALYSIS

Article IX, Section 14 of the New Mexico Constitution provides 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 {*36} any donation to or in aid of any person, association or public or private corporation, or in aid of any private enterprise for the construction of any railroad; 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.

An appropriation to a non-profit corporation for economic development would violate this section of our constitution. The answer to question one is therefore no.

Your second question asks if a city or county can appropriate funds for economic development. We assume that the appropriation mentioned would be used for promoting economic development and we will therefore answer accordingly.

Article IX, Section 14 of the New Mexico Constitution, quoted above, does not prohibit indirect aid or benefit to a private corporation. It only prohibits an allocation or appropriation of something of value without consideration to a person, association or public or private corporation. **Village of Deming v. Hosdreg Company**, 62 N.M. 18, 303 P.2d 920 (1956). In the **Hosdreg** case our Supreme Court upheld the Industrial Revenue Bond Act which was enacted by our legislature to encourage certain types of economic development. It is our opinion that legislation could be enacted granting municipalities or counties the power to promote and encourage industrial development without violating the New Mexico Constitution.

Last of all you ask if enabling legislation must be enacted to allow municipalities or counties to promote economic development. It is a general rule that the powers of a municipal corporation are derived solely from the state. **Town of Mesilla v. Mesilla Design Center & Book Store**, 71 N.M. 124, 128, 376 P.2d 183 (1962). We find no grant of power allowing municipalities or counties to promote general economic development and therefore conclude that it will be necessary to enact enabling legislation. Legislation similar to the legislation creating the Department of Development, Sections 4-17-1 through 4-17-5, N.M.S.A., 1953 Compilation could be constitutionally enacted.

By: Gary O'Dowd

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