

**Opinion No. 75-73**

December 23, 1975

**OPINION OF:** TONEY ANAYA, Attorney General

**BY:** W. Royer, Assistant Attorney General

**TO:** Vincent J. Montoya Executive Officer State Board of Finance 421 State Capitol Building Santa Fe, New Mexico 87503

**QUESTIONS**

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May a governmental unit of the State of New Mexico transfer personal property to another governmental unit of this State without compensation?

CONCLUSION

Yes.

**OPINION**

{\*192} **ANALYSIS**

Article IX, Section 14 of the New Mexico Constitution contains a limitation on the transfer or donation of real or personal property owned by governmental units. It provides in pertinent part:

Neither the state, nor any county, school district, or municipality, 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 . . . .

The New Mexico Supreme Court has construed Article IX, Section 14 to provide that the constitutional enjoinder is not applicable to a legislatively sanctioned donation by the State or one of its governmental agencies to another such agency. **City of Gallup v. New Mexico State Park and Recreation Commission**, 86 N.M. 745, 527 P.2d 786 (1974); **Wiggs v. City of Albuquerque**, 56 N.M. 214, 242 P.2d 865 (1952); **Hutcheson v. Atherton**, 44 N.M. 144, 99 P.2d 462 (1940); **White v. Board of Education**, 42 N.M. 94, 75 P.2d 712 (1938); and **Harrington v. Atteberry**, 21 N.M. 50, 153 P. 1041 (1915).

Statutory authority for the transfer of personal property by a department, commission, agency, or institutional board of the State or a local public school district is found in Section 6-1-8, NMSA, 1953 Comp. It provides:

Sale of property by state agencies or local public bodies -- Approval of board of finance -- Exception. A. Any department, commission or local public school district is empowered to sell **or otherwise dispose of real or personal property** belonging to such state department, commission, agency, institution or local public school district, subject to approval of the state board of finance; Provided, however, the governing authority of each state agency and local public public body, as defined by section 4-4-2.1 New Mexico Statutes Annotated, 1953 Compilation (being Laws 1957, Chapter 248, section 1), may dispose of items of personal property having a current resale value of fifty dollars (\$ 50.00) or less, belonging to such agency or body without necessity of prior approval of the state board of finance, wherein the governing authority {*\*193*} of the state agency or local public body has affirmatively complied with the provisions of the preceding section of this 1961 act [6-1-7.1].

B. The director of the department of finance and administration shall have the power to credit any payment received from the sale of any such real or personal property to whatever fund of such state department, commission, agency, institution or local public school district as he deems appropriate. And the head of such department, or the president, or chairman of the commission, or the governing board of such agency or institution is authorized to execute such deeds, leases, right of way easements, bills of sale or other documents necessary to convey all or any interest in the real or personal property of the governing authority without warrant. (Emphasis added)

A transfer of personal property by the above listed governmental units to another governmental unit without compensation is a "disposal" of such property. Therefore, it is our opinion that a transfer of personal property without consideration by one such governmental unit to another governmental unit is authorized by legislative sanction and falls within the exception denoted by the Supreme Court in **City of Gallup v. New Mexico Park and Recreation Commission, supra**. We note, however, that all such transfers require approval of the State Board of Finance.

Municipalities are granted the authority to donate personal property to other governmental units in Section 14-55-2D, NMSA, 1953 Comp. It provides:

A municipality may sell, at private or public sale, exchange **or donate real or personal property to the state, to any of its political subdivisions** and to the federal government if such sale, exchange or gift is in the best interests of the public, and is approved by the State Board of Finance. (Emphasis added)

Counties have been granted the identical power with respect to personal property by Section 15-36A-1, NMSA, 1953 Comp. (1975 Interim Supp.). It provides in part:

All counties are granted the same powers that are granted municipalities except for those powers that are inconsistent with statutory or constitutional limitations placed on counties.

We cannot identify any statutory or constitutional limitation that would prohibit the counties from exercising the power given to municipalities in Section 14-55-2D, **supra**. It is our opinion, therefore, that municipalities and counties may transfer personal property without consideration to other governmental units with the approval of the State Board of Finance.