

Opinion No. 79-11

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TO: Senator John D. Rogers, 146 San Juan, Los Alamos, New Mexico 87544

EDUCATIONAL INSTITUTIONS

A state educational institution may expend funds for capital improvements on land which has been deeded to the state, subject to a perpetual restriction that it only be used for educational purposes.

QUESTIONS

Can a state educational institution properly expend capital funds appropriated by the legislature for capital improvements when the land upon which the capital improvements are to be made is deeded to the state by the federal government subject to a perpetual restriction that the land be used only for educational purposes?

CONCLUSIONS

Yes.

ANALYSIS

If the state obtains title to property from the federal government by deed stating that the property may only be used for educational purposes, the property is conveyed to the state subject to a condition subsequent. When the federal government transfers property by such a deed, it retains only a power of termination or a right to re-enter in the event the condition is broken. **Prince v. Charles Ifeld Co.**, 72 N.M. 351, 383 P.2d 827 (1963).

Insofar as the land is to be used by a state educational institution for the construction of buildings and other capital improvements, it does not appear that there will be a breach of the condition subsequent. The state's title to the land is impaired only to the extent that a state educational institution would cease to use the land for educational purposes.

There is no law prohibiting otherwise legal expenditures for capital improvements solely because the land upon which the improvements are to be made is subject to a perpetual restriction on use. In some cases, Article IX, Section 14, N.M. Const. may prohibit the state from investing in permanent capital improvements on land to which it

does not have title or does not lease for a period covering the useful life of the improvements. That provision prohibits the state from making "any donation to or in aid of any person, association or public or private corporation." If the state is removed from land on which it has made capital improvements, the forfeiture of its investment could constitute a prohibited donation.

In this case, however, Article IX, Section 14 need not necessarily prohibit an expenditure for capital improvements. First, it is well-settled that Article IX, Section 14 does not apply as between the state or one of its subordinate agencies to another such agency. **Wiggs v. City of Albuquerque**, 56 N.M. 214, 242 P.2d 865 (1952); **City of Gallup v. New Mexico State Park and Rec. Comm'n**, 86 N.M. 745, 527 P.2d 786 (1974). It may also be the case {26} that it does not apply as between the state and the federal government in that the federal government is not a "person, association or public or private corporation." Nevertheless, that distinction has not been specifically defined. See, e.g., Opinion of the Attorney General No. 58-235, dated December 17, 1958.

Second, even where the restriction on use is in perpetuity, if the condition is not broken throughout the useful life of the capital improvement or for the period that the investment retains value, then a subsequent forfeiture of the capital improvements may not be a donation. A donation within the meaning of Article IX, Section 14, has been defined as "something of value." **Village of Deming v. Hosdreg Company**, 62 N.M. 18, 303 P.2d 920 (1956).

Finally, the burden would be on the federal government to establish that the property was no longer being used for educational purposes. A deed provision which under certain conditions works a forfeiture of the property by the grantee must be construed strictly and most strongly against the grantor. **Hart v. Northeastern N.M. Fair Ass'n**, 58 N.M. 9, 265 P.2d 341 (1954); **Garry v. Atchison, Topeka & Santa Fe Railway Co.**, 71 N.M. 370, 378 P.2d 609 (1963).

In sum, whatever burden the perpetual restriction to use for educational purposes imposes on the state's title to the land, it does not warrant withholding expenditure of a legislation appropriation by a state educational institution for capital improvements.

ATTORNEY GENERAL

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