

## Opinion No. 79-02

February 5, 1979

**OPINION OF:** Jeff Bingaman, Attorney General

**BY:** Jill Z. Cooper, Deputy Attorney General

**TO:** Richard Folmar, Legislative Council Service, Executive-Legislative Building, Santa Fe, New Mexico 87503

### CONSTITUTION- NEW MEXICO

Article IX, Section 14 of the New Mexico Constitution would prohibit the state from enacting a law authorizing the payment by the state treasurer of one dollar of an individual's state income tax liability to the political party designated by the taxpayer on his tax return.

### QUESTIONS

Would legislation granting New Mexico taxpayers the option of designating one dollar of their state income taxes for distribution as a contribution to a political party be in violation of Article IX, Section 14, New Mexico Constitution?

### CONCLUSIONS

Yes.

### ANALYSIS

This question has been raised with respect to the constitutionality of a proposed bill which would permit taxpayers to designate on their state income tax forms the sum of one dollar of their state income tax liability for deposit in an "election campaign fund" to be created in the state treasury. That fund, which may be invested by the State Treasurer in the same manner as other public money, would be distributed by the State Treasurer to the political parties designated by the taxpayers on July 1 of each even-numbered year.

The dollars to be deposited to the credit of political parties under the proposed bill are tax revenues which would, in any event, be deposited with the State Treasurer. Section 7-1-6 NMSA 1978. Having been deposited with the State Treasurer, the "election campaign fund" could not, in any event, be paid out without legislative appropriation. Article IV, Section 30, New Mexico Constitution; **New Mexico Board of Public Accountancy v. Grant**, 61 N.M. 287, 299 P.2d 464 (1956). Thus, the proposed bill appears to be making a legislative appropriation of some portion of state income tax revenues.

The proposed bill does not provide an exemption of the designated amount from tax liability. Thus, the substantive feature of the proposed bill permitting a taxpayer to designate one dollar of his taxes for a specific purpose does not subtract that dollar from the general revenue nor exempt it from the constitutional or statutory restrictions on the expenditure of state funds. A distribution of state income tax revenues to political parties, although directed by the taxpayer, is nevertheless a distribution of state funds and, as such, subject to certain limitations.

In particular, Article IX, Section 14 limits the distribution of public funds by providing that:

"Neither the state, nor any county, school district, or municipality, except as otherwise provided in this {\*4} constitution, shall . . . make any donation to or in aid of any person, association or public or private corporation. . .".

In the context of this provision, a donation has been defined as a gift, "an allocation or appropriation of something of value, without consideration." **Village of Deming v. Hosdreg Company**, 62 N.M. 18, 28, 303 P.2d 920 (1956).

This office has previously concluded that when "the state will receive, or reasonably expect to receive full value for the money paid," an appropriation is not a gift or donation. Opinion of the Attorney General No. 72-67, dated December 4, 1972; see also, Opinion of the Attorney General No. 63-126, dated September 23, 1963. The proposed bill does not, however, suggest that any benefit will accrue to the state in consideration of appropriations to political parties and a distribution from an "election campaign fund" appears instead to be an outright gift. See, e.g., **State ex rel. Mechem v. Hannah**, 63 N.M. 110, 314 P.2d 714 (1957).

It has been established that the prohibition against donations 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 & Recreation Commission**, 86 N.M. 745, 527 P.2d 786 (1974). A political party is not, however, a subordinate agency of the state. It is rather a voluntary association of persons who act together principally for political purposes. See, e.g., **State ex rel. Maxey v. Industrial Commission**, 38 Ohio St.2d 12, 309 N.E.2d 858 (1974); **Carney v. Pilch**, 30 Conn. Sup. 34, 296 A.2d 687 (1972); **Rogers v. State Committee of Republic Party**, 96 N.J.Sup. 265, 232 A.2d 852 (1967); **State ex rel. Kiser v. Millspaugh**, 175 N.E.2d 13 (Ind. 1961).

It has also been established that even if a donation is to be used for a public purpose, it is not exempt from constitutional prohibitions. **Harrington v. Atteberry**, 21 N.M. 50, 153 P. 1041 (1916); **State ex rel. Mechem v. Hannah, supra**. Thus, regardless of its public nature, a donation to a political party is subject to the limitations of Article IX, Section 14.

In sum, the proposed legislation, as presented to this office for review, would authorize a donation of state funds to associations in violation of Article IX, Section 14.

**ATTORNEY GENERAL**

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