

## Opinion No. 81-27

November 3, 1981

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

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

**TO:** Lalo Garza, District Attorney Third Judicial District, Judicial Complex 2nd Floor, 135 East Griggs, Las Cruces, New Mexico 88001

### QUESTIONS

May the Dona Ana County Commission transfer ownership of a sanitation system to the Anthony Water and Sanitation District without compensation?

### CONCLUSIONS

Yes.

### FACTS

The County of Dona Ana owns a sanitation system in the Anthony, New Mexico area which is leased to the Anthony Water and Sanitation District. The County would like to transfer ownership of the Sanitation District. The system was acquired under a grant from the United States Department of Housing and Urban Development which does not assert any jurisdiction over the transfer of ownership of the property.

### ANALYSIS

A county commission is generally empowered "to make such orders concerning the property belonging to the county as they may deem appropriate." Section 4-38-13 NMSA 1978. A county commission's authority to dispose of property is, however, subject to Article IX, Section 14 of the New Mexico Constitution which prohibits a county from making "any donation to or in aid of any person, association or public or private corporation." A donation has been defined as a gift or allocation of something of value without consideration. **Village of Deming v. Hosdreg Co.** , 62 N.M. 18, 303 P.2d 920 (1956).

The prohibitions of Article IX, Section 14 have been held to be inapplicable to "donation" between 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). A county is a political subdivision of the state. **El Dorado at Santa Fe, Inc. v. Board of County Commissioners of Santa Fe County** , 89 N.M. 313, 551 P.2d 1360 (1976). Similarly, a water and sanitation district organized in accordance with the Water and

Sanitation District Act, Sections 73-21-1 through 73-21-54 NMSA 1978 is a political subdivision of the state. See, **Gibbany v. Ford** , 29 N.M. 621, 225 p. 577 (1924).

A "donation" of property from one political subdivision of the state to another is not prohibited by Article IX, Section 14. However, as the county would be disposing of property valued at more than five hundred dollars, the transfer of the sanitation system must be approved by the state board of finance in accordance with Section 13-6-2 NMSA 1978.

## **ATTORNEY GENERAL**

Jeff Bingaman, Attorney General