

Opinion No. 89-20

June 20, 1989

OPINION OF: HAL STRATTON, Attorney General

BY: Carol A. Baca, Assistant Attorney General

TO: The Honorable Harroll Adams, State Auditor, PERA Building, Santa Fe, New Mexico 87503

QUESTIONS

May a school district spend public funds to provide its full time employees with membership in a private health club?

CONCLUSIONS

Yes, if the membership is provided in return for services rendered to the school district.

ANALYSIS

We understand that the Bloomfield Municipal Schools entered into an agreement with the Royal Spa and Sport Club of Farmington, New Mexico to pay a \$1,000, one-time membership fee that covers all full time employees of the school district. The Bloomfield Municipal Schools provided this membership as an additional employee benefit to encourage employees to become "healthier."

N.M. Const. art. IX, § 14, provides in part: "Neither the state, nor any county, school district, or municipality ... shall directly or indirectly lend or pledge its credit, or make any donation to or in aid of any person, association or public or private corporation." In *Village of Deming v. Hosdreg Co.*, 62 N.M. 18, 28, 303 P.2d 920, 926-27 (1956), the New Mexico Supreme Court defined a "donation" for constitutional purposes as a gift, "an allocation or appropriation of something of value, without consideration."

The authority to determine a compensation plan for employees of a school district is given to local school boards under Section 22-5-4(E) NMSA 1978, which provides that a local school board shall "fix the salaries of all employees and certified school personnel of the school district." This office has previously opined that if a benefit accruing to a school district's employees constitutes bargained-for compensation in consideration for services rendered, the benefit does not constitute a gift in violation of the anti-donation clause. Att'y Gen. Op. 77-8 (1977) (concluding that an act authorizing benefits for unused sick leave upon retirement was constitutional if benefits were part of compensation for services rendered); Att'y Gen. Op. 77-18 (1977) (concluding that school districts may contract with employees to pay, as part of a compensation plan, a retirement benefit for unused sick leave).

It is our opinion that the Bloomfield Municipal Schools can provide membership in the Royal Spa and Sport Club for its employees only if this benefit is bargained-for compensation for services rendered. If, for example, membership in the club were expressly mentioned in employment contracts or otherwise documented as additional compensation to Bloomfield Municipal School employees, such membership would be considered bargained-for compensation.

ATTORNEY GENERAL

HAL STRATTON Attorney General