

## Opinion No. 25-3805

March 9, 1925

**BY:** JOHN W. ARMSTRONG, Attorney General

**TO:** Requested by: The Senate of the State of New Mexico, Santa Fe, New Mexico.

Senate Bill No. 41, Providing a Gift to the Widow of the Late State Land Commissioner is Unconstitutional if Based upon Facts Stated in Senate Resolution No 16, Requesting an Opinion of Attorney Gen.

### OPINION

Your inquiry follows:

"Senate Bill No. 41 provides for the appropriation of Seventy-five Dollars a month for forty consecutive months, a total of Three Thousand Dollars for the relief of the widow of the late State Land Commissioner, in the nature of a pension or donation or gift; \* \* \*"

"\* \* \* the Attorney General is respectfully requested to give the Senate his opinion in writing whether Senate Bill No. 41 if enacted into law would be constitutional and enforceable and whether or not it would not be subject to attack and defeat in the courts."

Section 1 of said Senate Bill No. 41 seems to violate at least two provisions of our State Constitution. We are quoting only the essential features of the two sections of the Constitution which appear to be violated.

"Neither the state, nor any county, school district, or municipality, \* \* \* shall make any donation to or in aid of any person, \* \* \* provided, nothing herein shall be construed to prohibit the state or any county or municipality from making provisions for the care and maintenance of sick and indigent persons." Cec. 14, Art. 9, St. Const.

From a study of the foregoing section it will be observed that the State may make provision for the care and maintenance of sick and indigent persons. To come within the purview of this section, however, relief may be afforded only to persons who are both sick and indigent. The scope of said section 14, however, is still further narrowed by the provisions of Section 31, Article 4, of the State Constitution which in essential particulars reads as follows:

"No appropriation shall be made for charitable, educational or other benevolent purposes to any person, \* \* \* not under the absolute control of the state \* \* \*."

This section, apparently, would limit any state appropriation to the person under control of the State, -- a charge, probably, of some State Institution.

From the context of your Resolution, I assume that Senate Bill No. 41 was not meant or intended for the relief of any person sick, indigent and a charge of the State, therefore, Section 1 of said Bill is doubtless unconstitutional. I have considered the word "person" in its narrowest sense. I have construed said Section 14 most favorable to the object of the Bill whether the same be open to such construction or not.

In view of the foregoing it is probably unnecessary for me to give any opinion, at all, as to whether or not Section 2 of said Bill violates the provision of Section 24, Article 4, of the State Constitution in that it is a local and special law.