

**Opinion No. 48-5143**

April 8, 1948

**BY:** C. C. McCULLOH, Attorney General

**TO:** Mr. Fred J. Federici, District Attorney, Raton, New Mexico.

{\*143} This will acknowledge receipt of your letter of April 3, 1948 in which you have referred to this office certain correspondence from the Village of Roy with reference to deeding certain property to the New Mexico Health Foundation, with the understanding that the Health Foundation will at a later date deed same back to the Village.

Apparently, the question is whether or not the Village of Roy may legally deed this property to the New Mexico Health Foundation with the understanding that it will at a later date be deeded back to the Village together with improvements thereon.

Article 9, Section 14 of the New Mexico Constitution prohibits the State, a county or a municipality from making any donation to, or in aid of any person, association, or public or private corporation.

If the Village of Roy intends to make a gift of this land, then same would be prohibited by the above section of the Constitution.

If the Village of Roy intends to lease or sell the property, then the provisions of Section 14-4305 to 14-4309 of the 1941 Compilation must be complied with. These sections provide that property not used strictly for governmental functions may be leased or sold, and sets out the manner in which notice of sale or lease is given.

In view of the above provisions, if the Village of Roy intends to make a donation of the property, then the same is prohibited by the Constitutional provision set out above. If the Village of Roy intends to sell or lease it, it must follow the provisions of the sections of the law mentioned above.

It occurs to me that if a contract were entered into between the Village of Roy and the Health Foundation whereby the consideration stated would be the transaction mentioned in the correspondence, it would then take it out of the constitutional prohibition.

By ROBERT V. WOLLARD,

Asst. Atty. General