

Opinion No. 53-5826

October 20, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Edward M. Hartman State Comptroller Santa Fe, New Mexico

{*236} In your letter dated October 9, 1953, you enclosed a letter from the representative of a certain municipality seeking an opinion regarding property of such municipality.

It appears that the municipality purchased a tract of land within the corporate limits to be used for a park and that subsequently one third of the tract was sold to the municipal schools and a third was set aside for recreational purposes. The municipality proposes to deed back to the original seller the remaining one-third without any consideration and, in addition, pay the original seller one-third of the original purchase price in order that he will be reimbursed for putting the land back into cultivation. You inquire whether the municipality has the right to dispose of property without compensation or to pay the former owner of the property for putting the land back into cultivation.

Article 9, Section 14, of the New Mexico Constitution prohibits a municipality from donating its property to any person. This section would prohibit deeding property without compensation and also paying money {*237} out of the municipal treasury as a donation.

§ 14-4305, N.M.S.A., 1941 Comp., provides a procedure under which municipalities may sell properties not being used for a governmental function. This section, together with the following sections, should be followed in disposing of such property.

Apparently there is a clause for reversion of the property, if the same is not used for the purpose for which it was sold. Under such provision, the former owner could bring a Court action seeking a reversion of the property not needed by the municipality and could regain title in that manner.

By: C. C. McCulloh

Assist. Attorney General