

**Opinion No. 55-6279**

September 9, 1955

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Wiley Banes, Chairman, State Fair Commission, P. O. Box 1693, Albuquerque, New Mexico

Your request for opinion dated September 2, 1955 has been received.

Your inquiry: Is it legal for the State Fair to donate the proceeds, in excess of costs, from two of the horse races to the Community Chest?

It is noted that the State Fair is ". . . constituted and confirmed a body politic and corporate and confirmed as a governmental instrumentality . . ." § 45-20-13, N.M.S.A., 1953.

Further, Article IX, § 14, of our State Constitution provides:

"Neither the state, nor any county, school district, or municipality, except as otherwise provided in this Constitution, 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, or in aid of any private enterprise for the construction of any railroad; provided, nothing herein shall be construed to prohibit the state or any county or municipality from making provision for the care and maintenance of sick and indigent persons."

The above, considered together with the case of *Hutcheson v. Atherton*, 44 N.M. 144, 99 P. 2d 462, leads to the inevitable conclusion that such proceeds may not be donated as proposed.

While we commend highly the purposes and work of the Community Chest and would, if it were at all possible, indulge a course favorable to this organization, nevertheless, we are bound by the above and there exists no doubt in our mind that the donation may not legally be made.

We realize that the Community Chest serves a high public purpose. However, in the case above the Court held that the constitutional prohibition against donations depends not on the question of whether the organization is serving a public purpose, but rather whether or not there is a donation to or in aid of any person, association, or public or private corporation.

We regret that your inquiry must be answered in the negative.

By Santiago E. Campos

Assistant Attorney General