

Opinion No. 58-78

April 8, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,
Assistant Attorney General

TO: Sen. C. C. Royall, Jr., City Attorney, Town of Silver City, Silver City, New Mexico

QUESTION

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The town of Silver City wishes to transfer ownership of the Hillcrest General Hospital to Grant County, New Mexico. What consideration is necessary to effect the transfer?

CONCLUSION

Nominal consideration will probably suffice, if an agreement can be reached in regard to sick and indigent persons.

OPINION

ANALYSIS

The Hillcrest General Hospital in Silver City is located upon property owned by the town of Silver City. Some time in 1937, the town of Silver City constructed an existing hospital building by a General Obligation Bond Issue. The town of Silver City operated the hospital until the burden of operation became too great, at which time the hospital was leased to the county with a provision in the lease that the town would pay for one-third of the operating expenses with the county paying the balance of any deficit incurred. The hospital has thus been operated for approximately six (6) years. The town council at this time would like to transfer the hospital to the county commissioners and the county commissioners have agreed to accept the hospital on such terms and conditions as may be legal and necessary to meet the requirements of a County General Obligation Bond Issue for the construction of a new hospital wing. The town is willing to place the hospital under county jurisdiction by conveyance of the property or long term lease.

Turning to the specific question raised by the above facts, it should be noted that the county must necessarily take title to the property in some form from the city, which gives the county absolute and complete control over the property for a period which would run for at least during the life of any bond issue let by the county. We believe two methods could be used in obtaining title in the county, either by leasing the property from the city or by out-right purchase.

In Attorney General's opinion No. 57-80, this office stated that County Fair Buildings could be constructed on property not owned by the county but on which the county had a ninety-nine year lease. This opinion by implication indicates that the counties are authorized to lease property and, further, that a ninety-nine year lease would constitute such a real property interest that it would be legal and proper to erect buildings from funds obtained as a result of a bond issue. In view of Opinion 57-80, we believe it would be legally proper for the county to lease the hospital facilities from the town of Silver City. It would further appear that consideration could be given to a lease purchase agreement in this case.

In Attorney General's Opinion No. 5083, this office stated that Grant County could purchase the hospital grounds in issue but that the county could not incur any indebtedness in the purchase. The last paragraph of Opinion No. 50-83 stated:

"I want to make it clear that by this opinion we are not holding that counties do not have authority to purchase a hospital, but only that they do not have the authority to become indebted for such purpose."

Hence, we conclude that the property under consideration in this opinion could be purchased by the county provided no indebtedness is incurred in the purchase.

The remaining question is what consideration would be necessary in transferring title to the property in view of Article IX of the Constitution of New Mexico. Section 14 of this Article states:

"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.**"
(Emphasis ours)

At first blush, the foregoing Article would apparently prohibit the city from donating the property to the county which is a public corporation or transferring title for a nominal consideration. The proviso underlined above however, indicates that a municipality may make provision for the care and maintenance of sick and indigent persons. We believe therefore that the city could enter into a contract with the county whereby they convey the hospital facilities for a nominal amount and the added consideration that the county agree to provide for the care and maintenance of the city's sick and indigent citizens. By so doing we believe the restrictive provisions stated in Article IX, Section 14 would not be applicable.

By way of conclusion we are of the opinion that the city could either lease or sell its property to the county for a nominal consideration provided that the county agrees to

care for the city's sick and indigent citizens and that such care is expressly made a part of the consideration.