

Opinion No. 59-92

August 10, 1959

BY: HILTON A. DICKSON, JR., Attorney General

TO: Mr. Reuben E. Nieves Assistant District Attorney Ninth Judicial District Clovis, New Mexico

{*151} This opinion is in response to your recent request for our views on the following question:

Does the appropriation of state funds for the purposes of operating the grasshopper control program through the Grasshopper Control Board of the State of New Mexico violate the constitutional provisions prohibiting the lending or pledging of credit or the making of any donation to or in aid of any person, association, or public or private corporation?

In our opinion, the appropriation by the State Legislature for the operation of the grasshopper control program does not violate the above constitutional limitations.

Your request was precipitated by the doubts cast on the appropriations made by the Legislature because of the decision of the New Mexico Supreme Court in the so-called "hay case" (**State v. Hannah**, 63 N.M. 110, 314 P. 2d 714). You will recall that this case is the one in which the Supreme Court held that the appropriation by the Legislature for disposition to individual farmers to assist in the purchase of hay in drought stricken areas was held unconstitutional in that it violated Article IX, Section 14 of the New Mexico Constitution.

There have been other cases which have held similar appropriations unconstitutional for the same reason. These include **Hutcheson v. Atherton**, 44 N.M. 144, 99 P. 2d 462; **Harrington v. Atteberry**, 21 N.M. 50, 153 P. 1041; and **State Highway Commission v. Southern Union Gas Company**, 65 N.M. 84, 332 P. 2d 1007. In all of the above cases the Court held that even though a worthy public purpose may have been served by the appropriation, that such purpose was not sufficient to remove the appropriation from the purview of Section 14 of Article IX.

In our opinion, the instant appropriation may be readily distinguished from that held unconstitutional in the above mentioned cases. The first such distinction is that the funds appropriated by the Legislature for the grasshopper control program are to be administered by a subordinate state agency. This agency, namely, the State Grasshopper Control Board, has complete control over the funds, including the disbursements thereof, and enters into all contracts for the elimination of grasshoppers from a particular area designated as a grasshopper control district. It is true that the Federal Government participates in the program and jointly executes the contracts for operating etc., but the state agency retains complete control over its contributed portion.

{*152} The second distinction which may be drawn is that the funds are to be expended for grasshopper control purposes over a definitely described area which has been designated as a local control district. This district, before organization and designation, must have 51% of the land users who represent 80% of the land within an infested area agree in writing to the extermination program proposed, and further agree in writing to pay one-half of the sum expended by the State in the proposed extermination program. See Section 45-8-18, N.M.S.A., 1953 Compilation (p.s.).

It thus is clear that the funds are not disbursed to individuals or to private associations or corporations, but are administered through a subordinate government agency for a public purpose. See **Hutcheson v. Atherton**, supra, and **Harrington v. Atteberry**, supra. It may be observed that a program of this sort is not one in which private individuals could function with any effectiveness. If one farmer should determine to spray for grasshoppers without those whose land lies adjacent to his participating in the program, it may be readily recognized that the control operations of the first farmer would be useless. Therefore, it is incumbent upon a public agency, acting either under federal or state authorization, to effectuate the program so that controls may meet the desired result.

In summary, we believe the grasshopper control program meets the tests which have been established by the Supreme Court of this State as meeting the requirements of Article IX, Section 14; that is (1) a public purpose is being served; and (2) complete control of the expenditure of the State's contribution rests in a state agency.

Therefore, we are of the opinion that the appropriation made by the Legislature through House Bill No. 193 of the 23rd regular session of the State Legislature and codified as Sections 45-8-13 et seq. of the New Mexico Statutes Annotated, 1953 Compilation, Pocket Supplement, is constitutional and is not in violation of Article IX, Section 14 of the State Constitution.

By Thomas O. Olson

Assistant Attorney General