

Opinion No. 76-20

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BY: OPINION OF TONEY ANAYA, Attorney General Robert A Engel, Assistant Attorney General

TO: Vincent Montoya, Director, Department of Finance and Administration, State Capitol Building, Santa Fe, New Mexico 87503

QUESTIONS

Facts

As a method of financing the possible purchase of personal property, public entities of the state propose to enter into lease purchase or installment purchase agreements which may provide, among other things, the following:

1. The public entity (lessee) pays "rent" per specified terms. In addition to this "rent", lessee pays interest on the unpaid balance of the purchase price of the property. The interest may be specifically designated as interest or it may be "hidden" in the rentals or it may be designated as a service charge.
2. The lessee is given an "option to purchase" at various times during the term of the lease at a stipulated price. This stipulated price is the unpaid balance of the purchase price. The stipulated price declines as the lease nears its conclusion and thus it may be as little as one dollar or zero at the expiration.
3. The lessee may terminate the lease at any time, and it must terminate the lease if sufficient appropriations are not available to meet the current term's "rentals".

Question

Is the arrangement described above prohibited by the New Mexico Constitution?

Conclusion

See Analysis.

OPINION

{*87} Analysis