

**February 29, 2008 New Mexico Junior College and Lea County Cowboy Hall of  
Fame Operating Agreement**

The Honorable Carroll Leavell  
New Mexico State Senator  
P.O. Drawer D  
Jal, NM 88252

**Re:** Opinion Request - New Mexico Junior College and Lea County Cowboy Hall of  
Fame Operating Agreement

Dear Senator Leavell:

You have requested our opinion regarding whether an Operating Agreement between the New Mexico Junior College ("NMJC") and the Lea County Cowboy Hall of Fame ("Hall of Fame") is in compliance with the anti-donation clause of Article IX, Section 14 of the New Mexico Constitution. According to your letter, the Operating Agreement allows the Hall of Fame to exhibit its artifacts in the Western Heritage Museum, which is owned by NMJC.

Based on our examination of the relevant New Mexico statutes, opinions and case law authorities, and on the information available to us at this time, we conclude that the anti-donation clause is not implicated because NMJC is not a state institution covered by the clause.

There are two constitutional provisions that are applicable to this matter. First, the anti-donation clause is implicated whenever a state institution proposes to enter into an agreement with a private entity where the private entity may be receiving a benefit or donation from the state institution. See N.M. Att'y Gen. Op. 02-02 (2002). The clause provides, with certain exceptions not relevant here, that:

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 ...."

N.M. Const. art. IX, § 14. By its terms, the clause applies to the state, counties, school districts and municipalities. Political subdivisions and local governing bodies that are not listed are excluded from the prohibition. See New Mexico Att'y Gen. Advisory Letter to State Representative Nick Salazar from Assistant Attorney General Elizabeth Glenn (Feb. 4, 1993) (concluding that the anti-donation clause did not cover watershed districts).

The New Mexico Court of Appeals recently examined a second provision of the Constitution, Article XII, Section 11, to determine if NMJC was expressly listed as a state educational institution. See Leach v. New Mexico Junior College, 132 N.M. 106, 110, 45 P.3d 46 (Ct. App. 1999) (employment dispute involving state-based defenses).

Section 11 lists all of New Mexico's state educational institutions. The Court found that NMJC was "not designated as a state educational institution, university, or college in Article XII, Section 11 of the New Mexico Constitution" and thus was not an arm of the state. It was a "local governing body with specific discretionary powers and duties..." Id. at 110-111.

Because NMJC is not a state institution under Article XII, Section 11, it is not subject to anti-donation clause review under Article IX, Section 14. This means the clause is not implicated in reviewing the proposed Operating Agreement.[1]

You have requested a formal opinion on the matters discussed above. Please note that such an opinion is a public document available to the general public. Although we are providing you with our legal advice in the form of a letter instead of an Attorney General's Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the general public. If we may be of further assistance, or if you have any questions regarding this opinion, please let us know.

Sincerely,

ZACHARY SHANDLER  
Assistant Attorney General

cc: Albert J. Lama, Chief Deputy Attorney General

[1] This letter is limited to your specific question (i.e. regarding the anti-donation clause) and does not otherwise address the legality of the Agreement.