

**January 25, 2010 Advisory Letter---Representative Lundstrom: Can state monies  
can be used to fund the Red Lake Head Start Program?**

The Honorable Patricia A. Lundstrom  
New Mexico State Representative  
3406 Bluehill Avenue  
Gallup, NM 87301

**Re:** Request for Opinion-Funding a Head Start Program in Arizona

Dear Representative Lundstrom:

You requested our advice regarding whether state monies can be used to fund the Red Lake Head Start Program. The Program is physically located in Arizona but serves New Mexico residents. According to your request, the Program is sponsored by the Red Lake Chapter of the Navajo Nation located in Navajo, New Mexico. We understand that the Navajo Nation administers a federal grant that funds the Program and that the Program is operated by the Navajo Tribal Council.

As discussed below, based on the information available to us at this time and applicable law, we believe that the New Mexico legislature may properly appropriate money to fund the Red Lake Head Start Program.

The state legislature has plenary authority to appropriate money, with certain constitutional limitations. In particular, Article IX, Section 14 of the New Mexico Constitution, with certain exceptions, prohibits the state from making gifts or grants of public money to specified persons and entities. It provides, in pertinent part:

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....[1]

Longstanding New Mexico judicial opinions hold that the antidonation clause does not apply to grants of public money and property between the state and its political subdivisions. See City of Gallup v. New Mexico State Park and Recreation Comm'n, 86 N.M. 745, 527 P.2d 786; Wiggs v. City of Albuquerque, 56 N.M. 214, 242, P.2d 865 (1952). This Office has extended the rationale used in those opinions to exclude state grants to the federal government and tribal governmental entities from the antidonation clause's proscriptions. See, e.g., N.M. Att'y Gen. Advisory Letter to Governor Garrey Carruthers from Attorney General Hal Stratton (July 10, 1987) (donation of state land to federal government for use in super collider project did not violate Art. IX, § 14).

The Red Lake Head Start Program is federally funded and is sponsored and operated by the Navajo Nation. It does not constitute "a person, association or private or public

corporation” within the meaning of the antidonation clause. Accordingly, the New Mexico legislature may appropriate money to the Program.

If we may be of further assistance, please let us know. Your request to us was for a formal Attorney General’s Opinion on the matter discussed above. Such an opinion would be a public document available to the general public. Although we are providing you our legal advice in the form of a letter instead of an Attorney General’s Opinion, we believe this letter is a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the public.

Sincerely,

Lesley J. Lowe  
Assistant Attorney General

Cc: Albert J. Lama, Chief Deputy Attorney General

[1] There do not appear to be any constitutional restrictions on the legislature’s authority to appropriate money to otherwise proper recipients located outside the state.