

October 6, 2008 Appropriations for a Community Center

The Honorable Don Tripp
New Mexico State Representative
PO Box 1369
Socorro, NM 87801

Re: Opinion Request- Appropriations for a Community Center

Dear Representative Tripp:

You have requested our advice on the status of four legislative appropriations authorizing money for projects in Socorro, New Mexico. It is our understanding Socorro County, as the fiscal agent for the appropriations, would like to take the funds and lease an empty lot from the City of Socorro and build a new community center. According to your letter, “[w]hile parties are acting in good faith there is still the issue of the fact that [one] ... appropriation is designated for the Boys and Girls Club, not for a Community Youth Center. All this may be a simple matter of semantics but ... [resolution may] avoid ... any future disruptions of the funding.” Based on our examination of the relevant New Mexico constitutional, statutory and case law authorities, and on the information available to us at this time, we conclude that only three of the four appropriations may be used to construct and improve a new community center at the proposed area.

There were four relevant appropriations related to this matter.

- Laws 2005, Chapter 347, Section 16, Paragraph 173 (“2005 appropriation”): two hundred fifty thousand dollars (\$250,000) to purchase the current boys’ and girls’ club building and plan, design and construct renovations and additions to that building in Socorro county;
- Laws 2006, Chapter 111, Section 52, Paragraph 641 (“2006 appropriation”): two hundred fifty thousand dollars (\$250,000) to plan, design, construct, equip and furnish a boys’ and girls’ club in Socorro in Socorro county;
- Laws 2007, Chapter 42, Section 68, Paragraph 693 (“2007 appropriation”): one hundred thousand dollars (\$100,000) to plan, design, construct, equip and furnish a multipurpose youth center to house the boys’ and girls’ club in Socorro in Socorro county;
- Laws 2008, Chapter 92, Section 59, Paragraph 463 (“2008 appropriation”): twenty thousand dollars (\$20,000) to plan, design, construct, equip and furnish improvements to the county multipurpose youth center in Socorro in Socorro county.

We understand that state funding was initially given for buying the property that currently houses the Boys’ and Girls’ club facility near Parkview Elementary School and

then tearing down the building and constructing a new one. Since then, Socorro County officials have changed the plan and would now like to lease a tract of land adjacent to the current Socorro City Senior Center and use the money to break ground and build a new community center. The community center would house the boys' and girls' club and host other community and youth activities.

The New Mexico Constitution states that: "money shall be paid out of the treasury only upon appropriations made by the legislature" and each "appropriation shall distinctly specify the sum appropriated and the object to which it is to be applied." N.M. Const. Art. 4, § 30. In addition, a statute or appropriation should be read according to its plain language. See Wilson v. Denver, 125 N.M. 308, 314, 961 P.2d 153 (1998).

The 2005 appropriation designates \$250,000 "to purchase the current boys' and girls' club building and plan, design and construct renovations and additions to that building." Therefore, the legislature has provided a distinct sum and object for use of this money and it must be used at the club facility located near Parkview Elementary School. The money cannot be used for any other property or purpose in town. See N.M. Att'y Gen. Op. No. 88-46 (1988) (an appropriation that provided \$75,000 to improve the Questa Airport could not be spent at a site different from the existing airport); N.M. Att'y Gen. Op. No. 88-12 (1988) (an appropriation that provided \$150,000 to "improve" a building could not be spent to "purchase" the building).

In contrast, the 2006 and 2007 appropriations list the planning, designing and equipping of a boys' and girls' club in Socorro as the object of the appropriations. There is no distinct reference to a particular location or building. The 2007 appropriation expressly provides for the planning, designing and equipping a multipurpose center to "house" the boys' and girls' club. The 2008 appropriation provides for funding for improvements to this center. Therefore, the plain language of the 2006-2007 appropriations permits the construction of building for the purpose of housing the Boys' and Girls' Club at any location in the city of Socorro. The 2008 appropriation provides for improvements to this project. This means Socorro County can use the 2006-2008 appropriations for its above-stated purpose. The 2005 appropriation, however, is limited to use on the current Boys' and Girls' Club location.[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 A. SHANDLER
Assistant Attorney General

cc: Albert J. Lama, Chief Deputy Attorney General

[1] The non-conforming appropriation could still be re-authorized and made consistent with the other appropriations. In addition, your request did not raise and we have not addressed any anti-donation clause or equal protection limitations on appropriations to private entities such as the Boys' and Girls' Club. We assume, for purposes of this letter, that the appropriations at issue have been effected consistently with those constitutional requirements.