

Opinion No. [29-07]

February 23, 1929

BY: M. A. OTERO, JR., Attorney General

TO: Hon. Floyd Lee, New Mexico State Senate, Santa Fe, New Mexico.

CHARITABLE INSTITUTIONS -- Gallup Hospital; Appropriations for are Constitutional.
Art. IV. Sec. 31, Const.

OPINION

You request an opinion from me on the question as to whether or not it is constitutional for the Legislature to include in the appropriations made for charitable institutions the usual appropriation for the benefit of the Gallup Hospital, which is being conducted by an organization of Catholic Sisters. You state that a certain religious organization in this State has raised the question as to the legality of this appropriation and has declared it as their intention to use every means possible to knock out the said appropriation if the same is made.

The first thing to be considered in reply to your question is the wording of the constitutional provision itself governing appropriations for charitable and benevolent purposes. Article 4, section 31 of the New Mexico Constitution provides as follows:

"No appropriation shall be made for charitable, educational or benevolent purposes to any person, corporation, association, institution or community, not under the absolute control of the state, **but the legislature may, in its discretion, make appropriations for charitable institutions and hospitals, for the maintenance of which annual appropriations were made by the Legislative Assembly of nineteen hundred and nine.**"

Turning now to the appropriations made by the said Legislature of 1909, we find in section 7 of chapter 127 of the Laws of 1909 the following provisions: "For the various charitable institutions and hospitals of New Mexico, there is hereby appropriated the following sums, to-wit, to be distributed as follows:

St. Vincent's Hospital, Santa Fe \$ 3,600.00
Grant County Hospital, Silver City 1,800.00
Sisters of Mercy Hospital, Silver City 1,800.00
Ladies' Hospital, Deming 1,800.00
Eddy County Hospital, Carlsbad 1,800.00
Relief Society, Las Vegas 3,000.00
Sister's Hospital, Albuquerque 2,400.00
Gallup Hospital, Gallup 2,000.00
St. Mary's Hospital, Roswell 1,800.00

Sisters of Loretto, Mora 1,000.00
Sisters of Loretto, Las Cruces 1,000.00"

You will note that under the above quoted provisions of the 1909 laws an annual appropriation of \$ 2,000.00 was made for the "Gallup Hospital," and acting in pursuance thereof, and under the authority of the State Constitution, the various legislatures of New Mexico, since the admission of this state into the Union, have quite properly included the "Gallup Hospital" in the appropriations made for charitable and benevolent purposes.

You state to me, however, that the religious organization opposing this particular appropriation has informed you that the "Gallup Hospital" went out of existence some years ago, but that the appropriations for such hospital instead of then and there terminating were continued to be made to this Catholic Sisters hospital, another institution which, they state, is incorporated under the laws of another State and which apparently existed for some time in Gallup prior to the actual wind up of the original "Gallup Hospital" to whom the 1909 appropriation was made. This, they claim, is contrary to the spirit of the Constitution.

As to whether or not the constitution makers intended to authorize this particular appropriation solely for the benefit of the original "Gallup Hospital", the same to terminate at any time that that particular hospital closed, or whether or not this particular appropriation was really intended to be included among all of the other appropriations which they authorized **not** especially for the benefit of the particular **institution** to which the appropriation was made, . . . for I am sure you realize the fact that the Catholic Sisters do not receive any salary for their work in behalf of the poor, and that any monies they take in is simply used for the upkeep of the particular institution in order that it may better be able to meet the ceaseless demands of charity, . . . but rather with the idea of assisting both in education and in hospital care, the many poor and indigent persons in this State who were being ministered to by these particular institutions or their logical successors in the work they were doing; this is the real question.

If the constitution makers simply intended these appropriations to be made for the benefit of the particular institutions themselves, and their idea was that in the event that any one of these particular institutions went out of existence, as it is claimed that the original "Gallup Hospital" has done, then, of course, further appropriation in this instance would be unconstitutional.

On the other hand, if the real intent of the constitution makers, as I stated above, was not an appropriation to the particular institution as such, but rather for the benefit of the poor and indigent through the organizations engaged in that work, whether it be the selfsame institution, in every respect, through which the appropriation to the poor and indigent was originally made, or to the logical successors of such original institutions engaged in this work, is a matter in which one lawyer's opinion is as good as another's, especially in view of the fact that the heading of said article 4, section 31 of the Constitution states "Appropriations for charitable and benevolent **purposes.**" In addition

to this, most of the matters alleged to you by the religious organization interested in knocking out this particular appropriation are largely questions of fact which are not to be decided by this office.

Therefore, in view of all of the foregoing, it is my opinion that the Legislature is not only well within its rights in continuing this appropriation, but, since the legality of the same has been questioned after all these years, it should by all means again make the said appropriation so as to afford an opportunity to those interested in knocking the same out, whether on the grounds of alleged unconstitutionality, or with the desire of saving this \$ 2,000.00 for the State, or for any other purpose, to carry their troubles to the logical tribunal, the courts of this state.

Trusting that the foregoing is sufficiently clear, I am