

Opinion No. [29-61]

December 4, 1929

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

TO: Mr. W. B. Walton, District Attorney, Silver City, New Mexico.

PUBLIC MONIES -- May not be donated to private hospital. § 31, Art. IV. Const.

OPINION

I have your favor of the 30th ultimo telling me that Grant County expects shortly to receive a sum approximating \$ 50,000.00 from the sale of debentures under the provisions of chapter 4 of the Laws of the Ninth State Legislature. You state that pressure is being brought on the members of the Board of County Commissioners to "donate" the entire amount to the Grant County Hospital, a private corporation managed and conducted by the women of Silver City, to enable them to erect a new hospital building. You ask me whether or not such a donation or grant is within the power of the Board of County Commissioners.

In reply thereto I beg to advise that section 31 of article 4 of the State Constitution provides as follows:

"No appropriation shall be made for charitable, educational or other benevolent purpose to any person, corporation, association, institution or community, not under the absolute control of the state."

Then follows an express privilege to the legislature to make such donations to certain institutions designated, as an exception.

A county is a body politic and corporate and the powers of a county as such can be exercised only by the county commissioners, (sec. 1188, Code of 1915) and are therefore agencies of the state and subject to the constitutional limitations, and are bound by the above quotation from the constitution.

Another thing, as the counties are corporate bodies only they are limited in their powers to those expressly given to them or necessarily implied, and do not have the powers of the state in general, as the state legislature has, and I can find no statute that gives the counties the power to **give** away money belonging to the county. Sections 1199 and 1201 give the county some general powers, but under the interpretation given to section 1201 by the Supreme Court in the case of Board of Co. Comm. v. Hubbell, 28 N.M. 634-636, these give them only powers to **conserve** the property of the county and not to dissipate it or give it away.

I think, therefore, for the two reasons set forth above that if this money should be given or donated to this hospital that the County Commissioners would be liable personally for the amount.

Neither in the Act of Congress nor in the Act of the State Legislature accepting the lands, is there any limitation or direction as to what the counties or the city should do with the money derived from this source.

Such is my opinion of the law governing this proposition, regardless of the merits of the particular proposed use of this money.

With kindest personal regards, as always, believe me,