

**Opinion No. 41-3714**

February 14, 1941

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. C. R. Sebastian State Comptroller Santa Fe, New Mexico

{\*34} You inquire whether the same rule with respect to donations on the part of county commissioners is applicable to municipalities, and particularly whether it is applicable to revenue from municipally owned utilities.

The rule is contained in Section 14 of Article IX of the Constitution and, briefly stated, provides that "neither the state, nor any county, school district or municipality", shall directly or indirectly "make any donation to or in aid of any person, association, or public or private corporation", excepting only for the care and maintenance of sick and indigent persons.

I am satisfied that this prohibition is sufficiently broad to include revenues from municipally owned utilities, and that no donations may be made from such funds.

Furthermore, I call your attention to Section 90-2601, 1929 Compilation, specifically declaring that the revenue derived from the operation of any municipally owned public utility shall be used (a) to maintain, repair, improve and extend such utilities and to pay the legitimate expenses of operation, (b) to pay interest on the public utility bonds, and (c) to create a sinking fund for the payment of bonds; and to Section 90-2603, 1929 Compilation, which specifically states that revenue from municipally owned utilities shall be so used "and in no other manner". Donations of funds for any purpose clearly would violate this provision of the Code.

However, the specific donation contemplated and with respect to which inquiry was made in your letter does not, in opinion, amount to a donation of funds, but of certain incidental accommodations in the setting up of certain power using equipment for the N. Y. A., and it is my understanding that proper and legal arrangements therefor have been made. This opinion is written, nevertheless, by reason of the fact that, as I understand it, the public utility mentioned in your letter when privately owned did make donations to worthy causes in the city and that demands for like donations are being made on the utility since it became municipally owned. It now has no right to grant them.

By A. M. FERNANDEZ,

Asst. Atty. General