



## Attorney General of New Mexico

**GARY K. KING**  
Attorney General

**ALBERT J. LAMA**  
Chief Deputy Attorney General

January 21, 2010

The Honorable Thomas Anderson  
New Mexico House of Representatives  
10013 Plunkett Drive, NW  
Albuquerque, NM 87114

Re: Opinion Request---Film Industry use of Opera rehearsal hall

Dear Representative Anderson:

You have requested our advice whether the use of the proposed Santa Fe Opera rehearsal hall by the film industry would violate the anti-donation clause of the New Mexico Constitution. According to your letter, Speaker Ben Lujan introduced House Joint Resolution 8 ("Santa Fe County Land Lease-Purchase") during the 2009 legislative session that called on the New Mexico Department of Cultural Affairs to construct a rehearsal hall and then enter into a lease-purchase agreement with the Santa Fe Opera. Your letter adds: "the lease-purchase agreement provides that the open-air rehearsal hall will only be used by the Opera during three months of the year--in the summer." The letter asks: "I am aware of a provision that allows the film industry to use inactive state properties free of charge...[does this mean the film industry could use it for the] other nine months of the year."

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 the film industry may use the proposed rehearsal hall in accordance with NMSA 1978, Section 15-3B-7.1.

House Joint Resolution 8 discusses "real property owned by the cultural affairs department." It provides that the Department shall construct "an open-air rehearsal facility" on this property. Then, "on receipt of consideration from the opera in cash or cash-equivalent ...equaling the fair market value of the real property, the cultural affairs department will transfer the real property with improvements to the opera." Until the transaction is complete, however, the State will own the property and rehearsal hall. See N.M. Att'y Gen. Op. 64-92 (1964) (the State Fair owns its property even when it is a lessor of the property).

The anti-donation clause provides that "[n]either the state, ...shall directly ...make any donation to ... any person, association or ...private corporation..." N.M. Const. art. IX, § 14. The legislature has authorized the State Property Control Division, as custodian of state buildings, to "provide for the free access to state buildings by the motion picture industry." NMSA 1978,

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Page 2

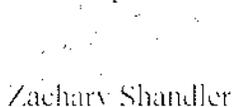
§15-3B-7.1 (2001) (emphasis added). These two provisions can be interpreted consistently under the facts raised here. See State ex rel. Quintana v. Schnedar, 115 N.M. 573, 575, 855 P.2d 562 (1993) (“We also presume that the legislature did not intend to enact a law inconsistent with existing law.”). For example, your letter suggests that the film industry will use this property when it is inactive. Our office has opined that the anti-donation clause does not necessarily prohibit a private group from using “public ...buildings or facilities after ...hours where such use...will not interfere with normal...activities.” N.M. Att’y Gen. Op. No. 63-106 (1963).

The State must receive compensation if there are “any actual expenses occasioned from such private use” and it must be done “on an equal basis and without preference as to any particular group...” Id. Your letter suggests that individual films will have the open opportunity to use the property and will use it in a temporary or brief manner (i.e. shoot one or two scenes) without incurring any actual cost to the State. See N.M. Att’y Gen. Op. No. 92-03 (1992) (there is no actual expense to the State when private groups place equipment in a state building that “take up only minimal space and ... not require public bodies to provide any services.”). Cf. NMSA 1978, § 15-3-6.1 (2001) (State Property Control Division may charge the film industry to use the old state penitentiary “for lease at reasonable market rates” because the state provides certain on-site services to ensure the safe use of this facility); N.M. Att’y Gen. Op. No. 92-03 (1992) (private group must pay rent if they want to occupy the building on a long-term basis); N.M. Att’y Gen. Op. No. 87-33 (1987) (private film group must pay to use state “office space, equipment, and use of telephone” services).

Therefore, based on the facts presented, we conclude the film industry may use the proposed rehearsal hall in accordance with the anti-donation clause and NMSA 1978, Section 15-3B-7.1. It is our understanding that our office telephonically communicated these propositions to your office during the legislative session, but you requested a final, written copy on this matter. It is also our understanding that the 2009 State Senate did not vote on House Joint Resolution 8 and therefore this proposal did not pass.

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 Shandler  
Assistant Attorney General

cc: Albert J. Lama, Chief Deputy Attorney General