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August 2, 1988

OPINION
OF
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Opinion No. 88-47

BY: Scott D. Spencer
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TO: Douglas R. Driggers
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Third Judicial District
135 E. Griggs - Second Floor
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QUESTION:

Can the township of Mesilla pay the mayor's annual dues from public funds for membership in the Las Cruces Forum, Inc.?

CONCLUSION:

No.

ANALYSIS:

We base our opinion on the following information, which we assume is correct. The Las Cruces Forum ("Forum") is a non-profit corporation that was incorporated on September 25, 1986 "by some of Las Cruces' most powerful and influential businessmen." El Paso Times, March 7, 1988, at 1B, col. 1. The purposes of the Forum, as stated in its articles of incorporation, include developing goals that foster economic development within Dona Ana County; and formulating, developing and administering public or private programs that benefit its constituent members, and the public of Las Cruces at large. Id. Article 3, Section 1-3 of the Forum's By-laws limits membership to top executives and influential leaders of the Las Cruces community. Forum meetings apparently are not open to the public. Letter from John and Jeanne

Clayshulte to Messilla Board of Trustees (Mar. 7, 1988); El Paso Times, March 7, 1988, at 1B, col. 1.

Article IX, Section 14 of the New Mexico Constitution provides in part: "Neither the state, nor any county, school district or municipality shall directly or indirectly lend or pledge its credit, or make any donation to or aid in any person, association or public or private corporation...." This language is so clear that it requires no interpretation. Harrington v. Atteberry, 21 N.M. 50, 54, 153 P. 1043, 1047 (1915). It prohibits the state, or any of its municipalities, from making any donation to or in aid of any person, association or public or private corporation. Id. A municipality cannot give gifts, allocations or appropriations of any value without consideration. See Village of Deming v. Hosdreg Co., 62 N.M. 18, 28, 303 P.2d 920, 927 (1956). The consideration must consist of a tangible, material and economic benefit to the municipality. See White v. Board of Educ., 42 N.M. 94, 105, 75 P.2d 712, 723 (1938).

New Mexico courts have never addressed the question of whether Article IX, Section 14 permits the expenditure of public funds for membership dues to a private organization. Other states, however, under constitutional restrictions similar to our own, have considered the closely related question of whether municipalities may spend public funds for municipal association membership dues and reached conflicting results. Compare Glendale v. White, 67 Ariz. 231, 194 P.2d 435 (1948) (city's payment of dues to a municipal league not prohibited by constitutional provisions forbidding municipalities to give or loan credit, or to make donations); with State v. Semple, 112 Ohio St. 559, 560, 148 N.E. 342, 343 (1925) (proposed contribution to municipal association was a misapplication of public funds). See also 15 E. McQuillin, Municipal Corporations §39.22 at 71 (3rd ed. 1985) ("While the expenditure of public funds for membership in a municipal league or to defray expenses of municipal officers appointed to attend a convention or conference of a municipal league has been recognized as public or municipal purposes, the opposite view has been taken in many jurisdictions."). The trend however, has been for courts to hold that these expenditures are permissible and for a public purpose. See Glendale v. White, supra 67 Ariz. at 237, 194 P.2d at 440; Hays v. Kalamazoo, 316 Mich. 433, 438, 25 N.W.2d 787, 792 (1947); 64 C.J.S. Municipal Corporations §1845 at 348 (1950). Thus, if the Las Cruces Forum constituted a "municipal league," then the payment of membership dues from public funds possibly would not violate Article IX, Section 14.

A municipal league, however, is an organization of municipalities from a given state; it serves as an agency for common action in matters of concern to member cities. State v. Semple,

supra, 112 Ohio St. at 560, 148 N.E. at 345. Municipal league members usually are officials and employees of municipal governments. City of Roseville v. Tulley, 55 Cal.2d 601, 605, 131 P.2d 395, 399 (1942). Based on the information we have, the Forum bears little resemblance, in either function or form, to a municipal league or an association of municipal officials. The Forum is not an organization of cities organized to assist municipal government, nor is it an organization of municipal officials or employees. It is an incorporated private organization whose members "must be either the Chief Executive Officer, President or the top executive official of an enterprise transacting business in the Metropolitan Statistical Area of Las Cruces." Statement of Purpose, Las Cruces Forum, Inc. at 2. In light of this fact, we believe that expenditure of public funds for a municipal official's membership in the Forum would constitute a donation to both the Forum and the municipal official. Therefore, it would violate Article IX, Section 14 of the New Mexico Constitution. See also Miss. Att'y Gen. Op. 86-142 (1986) (Mississippi Attorney General concluded that payment of civic club dues for municipal official constituted a donation to that official and violated a constitutional provision similar to N.M. Const. art IX, §14).

We do not opine that payment of dues to any organization, not classified as a municipal association, is outside the bounds of the constitution. If a direct, tangible benefit accrues to the state, county, or municipality, from the expenditure of public funds, then these expenditure may escape the constitutional prohibitions of Article IX, Section 14. See White v. Board of Education, 75 P.2d at 723 (1938); Stone v. City of Hobbs, 54 N.M. 237, 220 P.2d 704 (1950). This office previously has concluded that dues payments made on behalf of schools to a private association do not constitute a donation to the association in violation of Article IX, Section 14, when some tangible benefit accrues to the school as a result of membership. Att'y Gen. Op. 63-5 (1963). In a later opinion this office concluded that a local school board could, without violating Article IX, Section 14, make membership dues payments on behalf of individual employees to various professional education associations, if the board determined that such payments would benefit the schools under their supervision and control. Att'y Gen. Op. 76-27 (1976). However, we are not aware of any specific, tangible benefit that will accrue of Mesilla as a result of the Mayor's membership in the Forum. In fact, Ben Haines, Jr., the current chairman of the Las Cruces Forum, stated in an recent interview by the El Paso Times that, "the Forum is almost a non-entity. It doesn't have an agenda. It is primarily

to provide a local resource for people who are involved in the community." El Paso Times, March 7, 1988, at 1B, Col. 1.¹

In conclusion, in light of the Forum's current function and form, it is our opinion that Article IX, Section 14 prohibits expenditure of public funds for the Mesilla Mayor's membership dues.


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1 A statement by Kent Evans, president of the Las Cruces Chamber of Commerce, provides further support for our conclusion that membership in the Las Cruces Forum does not provide any tangible benefit to Mesilla. In the same El Paso Times article cited above, Mr. Evans, when questioned about the activities of the Las Cruces Forum, stated, "I know the group exists, but I know very little about it. I represent the business community in Las Cruces, and I should know about it." Id.