

The New Mexico Constitution strictly prohibits donations to individuals by governmental entities. The provision provides in pertinent part, "neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation" N.M. Const. art. IX, § 14. The uses provided for in the Constitution are care and maintenance of sick and indignant persons, establishing a veterans' scholarship program, a loan program for students of the healing arts, providing land buildings or facility infrastructures to support new or expanding business, and providing for affordable housing. ID. at § 14 (A) - (E).

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The constitution "makes no distinction as between 'donations', whether they be for a good cause or a questionable one. It prohibits them all." Sena v. Trujillo, 129 P. 2d 329, 333 (1942); Harrington v. Atteberry, 153 P.2d. 1041, 1047 (1915)

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Instead, only donations made for public purposes are permissible, such as expenditures for public purposes on public property. Hotel of Distinction W., Inc. v. City of Albuquerque, 107 N.M. 257, 259, 755 P.2d 595, 597 (1988). However, the anti-donation clause further prohibits a government entity from the expending public funds in discharging an obligation assumed by a private corporation or individual. Harrington, 153 P.2d at 1042; Hutcheson v. Atherton, 99 P.2d 462, 470 (funds could not be paid to a corporation in discharging an obligation assumed by it, thereby relieving it of the expenditure of its own funds). Although a private corporation or individual may seek to use public funds for a public purpose, "if this were the criterion by which the validity of an appropriation of public funds is to be measured, there would be hardly any limit upon the right of the state, county, city, or school districts to appropriate money to a private corporation. " Harrington, 153 P.2d at 1042.

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When a legislative grant is permissible due to the public nature of the action, it must nonetheless contain sufficient provisions to keep a distribution for a public purpose from ending in a donation to a private individual or corporation. State v. Hannah, 63 N.M. 110, 118-119; 314 P.2d 714, 720 (1957)

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In Hutcheson v. Atherton, 99 P.2d 462, 471 (1940), the Supreme Court stated that even if the corporation was a non-profit corporation "composed of a group of public spirited, patriotic citizens who have banded themselves together for [a worthy] purpose...[t]his fact[] does not make it a proper subject of governmental bounty. [T]he mere fact that the work in which it is engaged is of great educational and patriotic value [] does not legally entitle it to state or county aid."

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In authorizing the occupancy tax for revenue on lodging within the municipality, the Legislature decided that proceeds could only be used primarily for advertising, publicizing and promoting tourist-related attractions, facilities, and events. NMSA(1978) § 3-38-15(D). If there are excess proceeds after paying to advertise, publicize, and promote events, these funds may also be used to collect and administer the tax, acquire or improve real property for tourist related facilities, pay prior redemption premiums due, and

provide police and fire protection and sanitation services for tourist related events. Id. at § 3-38-15(E). NMSA (1978) § 3-38-21(A)-(F). Paying for general event costs is not including among the authorized uses for occupancy taxes. See Id. at § 3-38-15 & 3-38-21.