



UNM HEALTH SCIENCES CENTER

NM Anti-Donation Clause

&

Gifts vs. Grant/Contract

What is the NM Anti-donation Clause?

The Anti-donation Clause of the New Mexico Constitution forbids all state, counties, school districts, and municipalities from directly or indirectly pledging its credit or making any donation to or in aid of any person, association, or public or private corporation.

History of NM Anti-Donation Clause



The NM Anti-Donation Clause was included in the New Mexico Constitution during the nineteenth-century financing of the railroad. The development of the railroad started in 1830 and was said to be something “everyone” wanted! Cutting prices for consumers, raising prices received by producers, increasing wages, open markets, and ties to other states with a quicker mode of transportation. Who wouldn’t want the railroad???

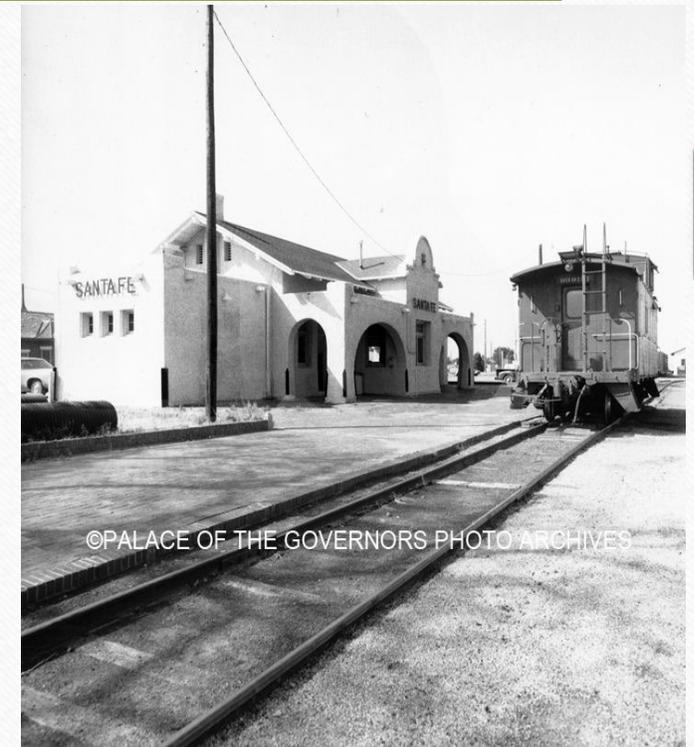
The railroad was expensive to construct and capital was scarce. This led to the issuance of large amounts of state “railroad aid bonds” which were soon defaulted on by numerous states. States responded by adding anti-subsidary provisions in their constitutions – which many thought only applied to the state and not their political subdivisions (UNM is a political subdivision of the State of NM).



History of NM Anti-donation Clause cont.

This interpretation led Counties & Towns to:

- Donate gifts of land, money, and government securities to railroad companies
- Make loans to railroads
- Guarantee corporate bonds
- Swap railroad stock (typically the city would issue bonds w/perks which were then swapped for an equivalent amount of railroad shares – then the railroad promoters would sell the bonds in an open market)



Cause for the Clause



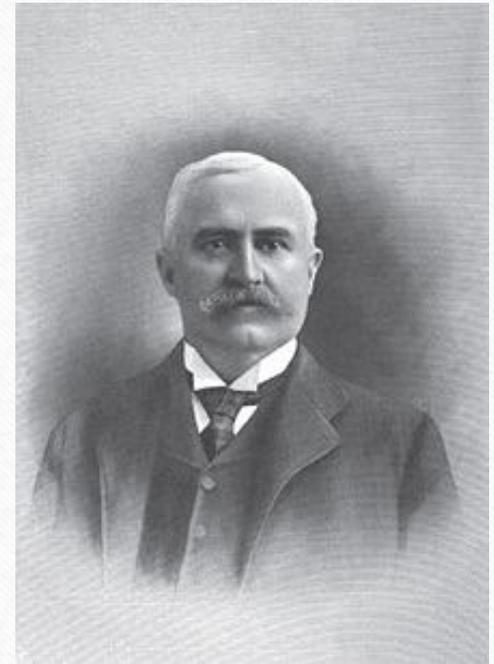
- Mismanagement of the issuance of bonds caused a large amount of municipal debt in which counties did not have enough tax base to care for basic functions of the government.
 - Lack of safeguards on how public money was spent allowed large sums of monies to be handed out freely with no security.
 - Fraud & Mismanagement of monies resulted in railroad lines never being built.
- The Public felt the government had abused railroad financing through the above mentioned. The Public was also personally affected as they were also bondholders.
 - Many cities and counties defaulted on their obligations and many court cases were heard

NM Anti-Donation Clause is Born!

The railroad came late to New Mexico, more around 1878. NM saw all that was occurring with the failed railroad financing around the United States. With that, NM was able to avoid some problems with railroad bonds but two jurisdictions decided to issue them anyway.

These two bonds that were issued ensued in a legal battle that was finally settled in 1912 and due to all that ensued around the United States (and in New Mexico) the NM Anti-Donation Clause was born!

In 1915, the Chief Justice of New Mexico Supreme Court proclaimed that this Clause should be applied literally.



William J. Mills

Anti-donation Clause of New Mexico State Constitution (Art.IX, Sec. 14)



(Sec. 14. [Aid to private enterprise; veterans' scholarship program; student loans; job opportunities.]

Statute text

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* or in aid of any private enterprise for the construction of any railroad; provided:

A. nothing in this section shall be construed to prohibit the state or any county or municipality from making provision for the care and maintenance of sick and indigent persons;

B. nothing in this section shall prohibit the state from establishing a veterans' scholarship program for Vietnam conflict veterans who are post-secondary students at educational institutions under the exclusive control of the state by exempting such veterans from the payment of tuition. For the purposes of this subsection, a "Vietnam conflict veteran" is any person who has been honorably discharged from the armed forces of the United States, who was a resident of New Mexico at the original time of entry into the armed forces from New Mexico and who has been awarded a Vietnam campaign medal for service in the armed forces of this country in Vietnam during the period from August 5, 1964 to the official termination date of the Vietnam conflict as designated by executive order of the president of the United States;

C. the state may also establish by law a program of loans to students of the healing arts, as defined by law, for residents of the state who, in return for the payment of educational expenses, contract with the state to practice their profession for a period of years after graduation within areas of the state designated by law; and

D. nothing in this section shall be construed to prohibit the state or a county or municipality from creating new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses if this assistance is granted pursuant to general implementing legislation that is approved by a majority vote of those elected to each house of the legislature. The implementing legislation shall include adequate safeguards to protect public money or other resources used for the purposes authorized in this subsection. The implementing legislation shall further provide that:

(1) each specific county or municipal project providing assistance pursuant to this subsection need not be approved by the legislature but shall be approved by the county or municipality pursuant to procedures provided in the implementing legislation; and

(2) each specific state project providing assistance pursuant to this subsection shall be approved by law. (As amended November 1, 1971, November 5, 1974, and November 8, 1994.)



How is the NM Anti-donation Clause Applied to Research?



No Public employee shall directly or indirectly donate anything of value to an outside entity – this can include:

- Participating in a research study with another Institution without compensation from the outside entity for his/her work. This would constitute working for free. UNM (and the researcher as a public employee of UNM) would be providing time, materials, and resources to the study, all of which constitute a value. UNM does not donate anything of value to outside entities.
- Providing consulting to an outside company on University time and using university resources, including meeting at UNM facilities without compensation.
- Testing a product for a company utilizing University resources or researcher time
- Giving supplies to private citizen's, i.e., a laptop that is not longer needed for a research study cannot be given to a person outside of the University – this would be considered donation of property.

NM Anti-donation Clause Do's & Don'ts

DO

Contact the Sponsored Projects Office if you will be collaborating on a project outside of the University

Rightfully collaborate with outside entities with proper contractual agreement in place

Ask Questions!



DON'T

Provide anything of value (including time) with outside entity unless you have a funded contract in place (with the help of the HSC Sponsored Projects Office).

Give away extra un-used supplies to family members





On The Flip Side

Receiving a Gift/Donation vs. a
Grant/Research Agreement



Receiving a Gift/Donation Quick Knowledge Check

Scenario 1: A colleague calls you up and says they really have a strong interest in the research you are conducting and would love to send a monetary donation to further that research – would it be allowable to accept this donation?



Yes, this would be acceptable and all donations would be received through the UNM Foundation. The Department would complete a Funds Establishment Form in order to receive the funds donated for the research.

Scenario 2: The CEO of a Pharma company calls you and says they are interested in the research you have done so far on combatting CKD. They ask if it would be okay to provide a monetary donation for this research purpose, but they will require you to provide updates on how the research is going and you might have to return any unused funds – would it be allowable to accept this as a donation?



No, this is not a true donation. Donations/Gifts do not have these types of conditions. This would be considered a sponsored project.

What's the Difference?

GIFT: a voluntary transfer of money or property made as a charitable donation without expectation or receipt of an economic benefit. May or may not be given for a specific purpose.

GRANT: a voluntary transfer of money or property for the primary intent to carry out a public purpose of support or stimulation without direct benefit to the sponsor.

CONTRACT: the acquisition of property or services for the direct benefit of the sponsor on a quid pro quo basis.



Characteristics of a Gift



Contractual requirements are not imposed. However, objectives may be stated and use of funds may be restricted to a particular purpose, such as a professorship, scholarship or research in a defined area

Award is irrevocable

A period of performance is not generally specified

Formal financial accounting and technical reporting are not required and there is no requirements to return unexpended funds.

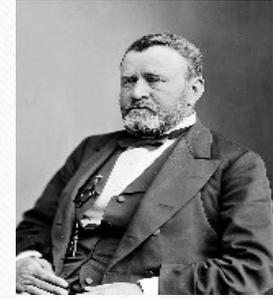
Federal, state, local or foreign government support is not typically considered a gift

Support is not provided for research-related care services or to test a sponsor's product

Although a sponsor might consider it a gift, there might be conditions states that would require the HSC Sponsored Projects Office to classify the external funding as a grant, contract, or clinical trial



Characteristics of a Grant



Contains terms on the use of funds, such as budgetary restrictions; state programmatic objectives to be achieved; defines responsible individuals and a period of performance; and details ownership rights

Usually the result of submitting an outcome-driven proposal

Programmatic and/or fiscal reports during the life of the project and at the end of the project may be required

May address intellectual property ownership and rights in data issues

Contains language regarding the right to revoke an award or withhold funding

Prior sponsor approval is required for significant programmatic and/or fiscal deviations

Future commitment of resources to provide continued support of the project may be required by the University



Characteristics of a Contract



The award may be subject to more restrictive conditions outlined in a contractual instrument

Financing may be on a cost reimbursement or fixed price basis

The sponsor participates in determining the work to be performed or the services to be provided

Intellectual property and rights in data are significant considerations

Note: Under the guidelines presented here, awards offered to the University for the performance of services such as testing or evaluating drugs for pharmaceutical companies would normally be classified as grants/contracts.

Test Your Knowledge: Anti-donation

Scenario 1: A Sponsor contacts a PI who specializes in Pathology and asks if they PI would be interested in testing a potential new pathogen for its effects with a new drug. The PI agrees to test and the Sponsor sends the pathogen to the PI for testing, without compensation and without having a formal agreement in place – is this considered a violation of the NM Anti-donation Clause?

Yes – the PI should first contact the HSC Sponsored Projects Office to discuss their intentions. SPO would then work with the Sponsor to put the proper agreements in place in order for the testing to take place.

Scenario 2: An educational institution contacts a UNM PI and asks if they would like to participate in a clinical trial they have devised. The UNM PI reviews the protocol and determines what is being evaluated falls under Standard of Care (the costs are billed to the patients insurance). There will be no compensation for this study – is this a violation of the NM Anti-donation Clause?

Yes – Even if the clinical trial is Standard of Care, there is still researcher effort that is used in order to create consent forms, evaluate data, and comply with internal compliance requirements.

Test Your Knowledge: Gift/Grant/Contract

Scenario 1: A sponsor provides what they call a “gift” to the UNM Foundation for the purpose of breast cancer research. In the sponsor’s gift agreement, it states that if any inventions are developed with the use of these gifted funds, the sponsor will retain ownership. Is this a Gift? Grant? Contract?

GRANT – With the information provided, it doesn’t appear we are providing a service (contract) to the sponsor but intellectual property is being addressed. At this point, the gift agreement would be transferred to the HSC Sponsored Projects Office (SPO) for negotiations of terms

Scenario 2: A company provides a donation of \$500,000 to the UNM Foundation for the purpose of pediatric chronic kidney disease research. The only condition is these monies are to be used for the purpose of further the research. Is this a Gift? Grant? Contract?

GIFT – Because there are no other stipulations provided with the donation except for the purpose of research, this would be considered a gift and would be processed through the UNM Foundation

Gift? Grant? Contract? Or Something Else!

Award has a specified period of performance, budgetary restrictions are stated, ownership rights are addressed, and technical reports are due each quarter.



Grant

Award is irrevocable and a period of performance is not stated, however, the funds must be used for a specific purpose



Gift

Award requests testing services. It also addresses intellectual property and data rights. Funds will be released on a deliverables basis.



Contract

Award states Duke University will transfer genetically modified mice to a UNM PI for internal research purposes. Intellectual Property is addressed.



Material Transfer Agreement

Who Do I Contact?

Gifts

UNM Foundation

Betsy Till, Senior Director of Development

277-4503

Betsy.Till@unmfund.org

Grants & Contracts

HSC Sponsored Projects Office

Stacy Bigbie, Associate Director

272-9448

HSC-PreAward@salud.unm.edu

QUESTIONS??