

TO BE FILED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION

of

GEORGE DEUKMEJIAN
Attorney General

Robert D. Milam
Deputy Attorney General

:
:
:
:
:
:
:
:
:
:
:

No. 81-608

NOVEMBER 13, 1981

THE HONORABLE RAY JOHNSON, MEMBER OF THE CALIFORNIA
SENATE, has requested an opinion on the following question:

Does section 6 of article XVI of the California Constitution prohibit a general
law county from providing sheriff's law enforcement services to a city within the county
where the full cost of such services is not paid by the city?

CONCLUSION

Section 6 of article XVI of the California Constitution does not prohibit a
general law county from providing sheriff's law enforcement services to a city within the
county where the full cost of such services is not paid by the city.

ANALYSIS

Section 6 of article XVI of the California Constitution provides in pertinent part:

“The Legislature shall have no power . . . to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation. . . .”¹

This section not only prohibits the state Legislature from making a gift of public funds to a municipal corporation, but also prohibits a county from doing so. (*City of Oakland v. Garrison* (1924) 194 Cal. 298, 303.)

In 64 Ops. Cal. Atty. Gen. 478 (1981) this office stated:

“It has been consistently held that expenditures of public funds which may benefit private persons are not gifts within the meaning of section 6 of Article XVI if those funds are expended for a public purpose.” [Citations omitted.] (*Id.*, at p. 480.)

In regard to a county, an expenditure will be for a valid public purpose when some genuine interest of the county as a political subdivision is advanced. (*City of Oakland v. Garrison, supra*, 194 Cal. at p. 303.) When the funds expended do not serve the public purpose of the donor entity, then there is no public purpose that justifies the expenditure and the constitutional restraint applies. (*Mallon v. City of Long Beach* (1955) 44 Cal. 2d 199, 211; *Golden Gate Bridge etc. Dist. v. Luehring* (1970) 4 Cal. App. 3d 204, 211.) Thus the general rule is that the gift clause prohibits a contribution by one public agency to another where only the purposes of the donee agency are served, but such contribution is lawful if the public purposes of the donor agency are also served. (*Santa Barbara etc. Agency v. All Persons* (1957) 47 Cal. 2d 699, 707, rev’d., on other grounds 357 U.S. 275, mod. 53 Cal. 2d 743.)

The question concerns a contract between a city and county for the county to provide law enforcement services to the city. Section 51301 of the Government Code² authorizes a city and county to contract for the performance of city functions and section

¹This so-called “gift clause” has been in the California Constitution for many years. Originally, it was in article IV, section 31; between 1966 and 1974 it was section 25 of article XIII; since 1974 it has been in its present location in the California Constitution.

²Unidentified section references are to the Government Code.

51304 authorizes the city to pay the agreed-upon consideration. The price the city has agreed to pay in the past does not cover the full cost of providing the service by the county. The issue is whether such excess cost of providing law enforcement services to a city within the county is within the public purpose of the county.

The sheriff's statutory duties include preservation of the peace (§ 26600), arresting persons committing a public offense (§ 26601), suppressing public disturbances (§ 26602), and investigation of public offenses (§ 26602). There is no constitutional or statutory provision that confines these activities of a sheriff to the unincorporated area of the county. In fact, a sheriff's jurisdiction extends throughout the county, including the territory within its incorporated cities. (*People v. Scott* (1968) 259 Cal. App. 2d 268, 280; *People v. Pina* (1972) 72 Cal. App. 3d Supp. 35, 39–40.) The sheriff has concurrent jurisdiction with the chief of police within the city limits. (8 Ops. Cal. Atty. Gen. 149, 150 (1946).) We conclude that a public purpose of the county is served by providing law enforcement services to an incorporated city within the county. Indeed, the funding of the performance by a public officer of duties enjoined upon the officer by statute serve the same public purpose as the statute imposing the duties. As a consequence, there is no unconstitutional gift of public funds when the county pays more for sheriff services within a city than the city pays the county for such services.
