

## Opinion No. 47-5083

October 6, 1947

**BY:** C. C. McCULLOH, Attorney General

**TO:** Joseph W. Hodges District Attorney Sixth Judicial District Silver City, New Mexico

{\*93} We are in receipt of your letter of October 3, 1947, supplementing your letter of September 2, 1947, and my letter of September 16, 1947. You ask whether a county may issue bonds to buy a hospital already in existence. You call attention especially to Chapter 148 of the Laws of 1947 which provides in part that

"All such counties shall have the power to issue bonds for the construction or purchase and equipping of such hospitals and isolation wards, and for the purchase of necessary land therefor."

Article 9, Section 10 of the Constitution, {\*94} insofar as material, is as follows:

"No county shall borrow money except for the purpose of erecting necessary public buildings."

As this section authorizes counties only to erect necessary public buildings, counties do not have power to purchase buildings unless such power is granted them by implication.

There is no decision in this state to the knowledge of the writer passing directly upon the question here involved. However, it is the writer's information that Judge Kool held that the School of Mines, although having authority under Section 55-701 of the 1941 Compilation to erect an income-producing school building, still did not have the authority to buy a building already completed, to-wit, the Sandia School.

The Supreme Court has, however, in two cases, *Town v. Board of County Commissioners*, 43 N.M. 292 and *Board of County Commissioners v. State*, 43 N.M. 409, held that the power of a county to erect a necessary building did not carry with it the power to remodel such building. In the case of *Baker v. Town of Floyd*, 66 N. Y. S. 216, 32 Misc. 474, it was held that a statute authorizing a town to erect a town hall did not authorize the town to purchase a building already constructed.

The only other case that has come to my attention is *Kaiefer v. German - American Seminary*, 10 N. W. 50, 46 Mich. 634, which held that a grant made on condition that a building be erected did not lapse, although the building was not built, where the building was acquired by consolidation with another organization which had such building. In that case, however, the court based its decision primarily on the construction of conditions contained in grants and the policy against allowing a grant to lapse.

In view of the foregoing, it is my opinion that a county does not have the authority to become indebted to purchase a building already erected, and that insofar as the Legislature, by Chapter 148, attempted to vest counties with this power, the Legislature exceeded the authority granted it by Article 9, Section 10 of the Constitution.

If, of course, a county having issued bonds for the purpose of erecting a hospital purchased an old building and together with other materials in fact erected a new building, there would be no violation of the Constitution.

I want to make it clear that by this opinion we are not holding that counties do not have authority to purchase a hospital, but only that they do not have the authority to become indebted for such purpose.

By ROBERT W. WARD,

Asst. Atty. General