

Opinion No. 48-5170

September 15, 1948

BY: C. C. McCULLOH, Attorney General

TO: Mr. Lynell Skarda District Attorney Clovis, New Mexico

{*163} Reference is made to your letter of September 1, 1948 and subsequent communications with regard to the approval by this office of the Bi-State Fair Association Bonds of Curry County.

This office regrets very much that it cannot approve the purchase of those bonds by the State Treasurer and the disapproval is based specifically on New Mexico law and cases.

The fact that Chapter 152 of the 1947 Legislature authorized Curry County and no other counties to issue \$ 100,000 in bonds for the purpose of holding a fair, when other counties in the State are limited to creating a bonded indebtedness for such purposes to \$ 25,000 unquestionably makes such legislation special or local legislation.

It thus becomes necessary for us to determine whether or not such a special or local act of legislation contravenes Article 4, Section 24 of the Constitution of the State of New Mexico, for not all such special or local acts are violative of said provision. (See Scarbrough v. Wooten, {*164} 23 N.M. 616, 170 P. 743.) In fact we must determine if Chapter 152 of the New Mexico Laws of 1947 in any manner "regulates county affairs."

In this connection, we wish to direct your attention to the case of Martinez v. Gallegos, 28 N.M. 170, 210 P. 575, wherein we quote from the opinion of our Court, to-wit:

"Counsel for appellant argues that the section is void by reason of being local and special legislation, regulating county affairs, which is prohibited by Section 24 of Article 4 of the Constitution. It is to be admitted that the section is local and special and regulates county affairs. All acts creating counties are local and special, **and the limitation of the amount Harding county may spend for the purposes mentioned is a regulation of its affairs, in that it applies a different rule to it than is applied to other organized counties under the general law.**" (Emphasis Ours.)

A still later New Mexico Supreme Court case which affirms the law as laid down in the Martinez case, supra, is Hutcheson v. Atherton, 44 N.M. 144, 99 P. 2d 462, from which we quote from page 148 of the New Mexico Report, as follows:

"The statutory authorization for this bond issue is to be found in Laws of 1939, Chapter 75, the first section of which reads: 'Section 1. That the Board of County Commissioners of first class counties in this state are hereby authorized and empowered to establish and equip juvenile detention homes and for that purpose to issue bonds of such

counties in any sum necessary, not to exceed \$ 50,000. Such juvenile detention homes are hereby declared to be necessary public buildings.

* * * *

The first and second grounds of demurrer to the first cause of action, renewed before us as assignments of error, are so interdependent that a decision as to one resolves the other. The first is, that confining to first class counties the authorization contained in Laws of 1939, Chapter 75 to issue bonds for the construction of detention homes for juvenile delinquents, constitutes an unreasonable classification. If it does, the statute is a local or special law in contravention of Constitution Art. IV., Sec. 24, which is made the basis of the second ground of demurrer. Counsel for defendants have not pointed out the particular class of local or special laws inveighed against in the Constitution which it is claimed this measure offends. It is only local or special laws relating to enumerated subjects and those to which a general law can be made applicable, that are prescribed by the Constitution. *Scarborough v. Wooten*, 23 N.M. 616, 170 P. 743. In as much, however, as laws 'regulating county, precinct or district affairs' constitute one of the enumerated subjects, we will treat the questioned legislation as falling under it, and if local or special, it is of course, invalid."

Here again our high court held that authorization for the issuance of bonds by certain counties constituted a regulation of county affairs.

In view of the law laid down in the above two cases, we believe bonds issued under Chapter 152, Laws of New Mexico, 1947 are, to say the least, of questionable validity, and therefore the State Treasurer should not purchase same unless the validity of these bonds is first established by a court test.

By WALTER R. KEGEL,

Asst. Atty. General