

Opinion No. 48-5174

October 7, 1948

BY: C. C. McCULLOH, Attorney General

TO: Mr. George S. McDevitt City Attorney Gallup, New Mexico

{*169} In your letter dated September 1, 1948, you have requested an opinion regarding the following question:

May the City of Gallup use moneys obtained from general obligation bonds, issued for the extension and improvement of the water system, to defray the cost of constructing a pipeline from the city's water mains to the city's electric power plant located three miles beyond the city limits?

The City of Gallup owns its water and electric production and distribution systems. The electrical power plant which is located approximately three miles from the city limits is fed by a water well 2800 feet deep. This is the sole source of water supplying the power plant. The city obtains its general water supply from approximately twenty wells. The water from said wells is pumped to the surface by means of electrical pumps. The city has no artesian wells, no surface water supply, and no reservoir other than water tanks filled from the wells. The maximum storage capacity of said tanks is approximately 4,000,000 gallons of water, constituting at the most a week's supply of water.

The city is thus wholly dependent upon the supply of electrical energy to operate its pumps and a breakdown of the sole well presently supplying water to the power plant would in turn result in a failure of the electrical pumps with a possible consequent failure of the general water supply. The city, therefore, desires to construct a standby water pipeline to insure sufficient power to operate the wells supplying the city with water, and further desires to use water bond moneys for such purpose.

We are of opinion that the question presented must be answered in the affirmative. Section 14-3620 of the 1941 Compilation, applicable to water bonds, provides:

"Such bonds or the proceeds thereof shall be used only for the purpose of constructing, acquiring, enlarging, improving or extending a system of waterworks * * * for such city * *, the acquisition of water or water rights, necessary real estate or rights of way, privileges {*170} and easements and necessary appurtenances for such system; * * *."

We believe the quoted language is sufficiently broad to authorize the use of water bond moneys for the construction of a water pipeline to feed the electric power plant which in turn would result in a general improvement and extension of the water supply system. The very interdependence of the water system and the electric power plant is such that a contrary interpretation would amount to an unreasonable restriction of the city's primary duty to maintain and protect its water supply for the benefit of its inhabitants.

We further do not believe that a valid objection may be lodged against the construction of the pipeline in question because it will of necessity extend beyond the city limits. On the contrary, Section 14-3621 of the 1941 Compilation gives the city authority to construct a water pipeline beyond the city limits, to-wit:

"All incorporated cities, * * * shall have power by ordinance to contract for, establish, construct and maintain waterworks * * * and all necessary or convenient pipe-lines * * * and other appurtenances therefor, to be used in connection therewith; which pipe-lines * * * and appurtenances shall be located within or without, or partly within and partly without, the limits of such cities, * * * as may be determined thereby."

By W. R. KEGEL,

Asst. Atty. General