

Opinion No. 53-5694

March 10, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable Bertrand B. Prince District Attorney Santa Fe, New Mexico

{*86} This is in reply to your letter of February 14th, 1953, in which you request an opinion regarding the proposed initiation of proceedings for the issuance of Santa Fe County Auditorium Bonds in the amount of \$ 900,000.00. You asked three questions, which we will answer in the order presented in your request.

You ask first whether the contract entered into by the Board of County Commissioners and the architect is valid and enforceable, in view of the fact that the expense for the services of the architect is not provided for in the current county budget. In our opinion, this contract is valid and enforceable, if, of course, the contingencies contained therein are met. In our further opinion, it is immaterial {*87} that the current county budget makes no provision for payment of architects' fees. Section 6-311, N.M.S.A., 1941 Compilation, authorizes counties with populations in excess of 40,000 to issue the bonds of such counties, "for the purpose of acquiring suitable sites for public auditoriums within their counties, and for the building of such auditoriums." In our opinion, architect's services are clearly a necessary part of the "building of such auditorium," to the same extent as are materials, contractors' services, etc. Therefore, it follows that the architect's fees may be paid out of the proceeds of the bond sale. This would be the normal and, in our opinion, the simplest method of handling this expense. If the County Commissioners should desire instead to provide for this item in their budget, however, they could apply to the State Tax Commission and State Comptroller for a transfer of budget funds, under Section 7-119 N.M.S.A., 1941 Compilation.

Secondly, you ask how the expense of the contemplated election is to be met, since there is presently no item in the county budget to cover such expense. The solution to this problem is to apply to the State Tax Commission and State Comptroller for a transfer of budget funds, under Section 7-119 N.M.S.A., 1941 Compilation.

Thirdly you ask whether the issuance of \$ 900,000.00 general obligation bonds for the purpose of building a county auditorium would exceed the constitutional limit on indebtedness for Santa Fe County. According to the figures you have given this office, that is, an assessed valuation of taxable property in the County of over \$ 30,000,000 and a present outstanding indebtedness of \$ 40,000.00, it is clear that the county would be safely within the 4% limit imposed by Article 9, Section 13 of the New Mexico Constitution.

However, you will note in this connection that before the County may initiate these bond proceedings, the County Commissioners must, under Section 7-614 N.M.S.A., 1941 Compilation, send notice to the State Tax Commission of their contemplated action,

whereupon the latter, under Section 7-615 N.M.S.A., 1941 Compilation, will furnish the County Commissioners with "all necessary information with reference to the valuation, present outstanding bonded indebtedness, limitations as to tax rates and debt contracting powers . . ."

We sincerely hope that this opinion has answered all the questions you may have on the subject.

By: W. F. Kitts

Assist. Attorney General