

Opinion No. 53-5859

December 3, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Edward M. Hartman State Comptroller Santa Fe, New Mexico

{*281} You have asked the opinion of this office as to the legality of the Village of Ruidoso investing \$ 4,000 of its Water Meter Deposit Fund in Water Revenue Bonds of the Municipality of Ruidoso.

The pertinent statute is Section 7-207 of the 1941 Compilation, which insofar as is material to this inquiry permits and authorizes cities, towns and villages to invest:

"* * * all sinking funds or moneys remaining unexpended from the proceeds of any issue of bonds or other negotiable securities of any county, city, town or school district which are now or may hereafter by law be entrusted to their care and custody and all moneys not immediately necessary for the public uses of such counties, cities, towns or school districts in bonds or negotiable securities of the United {*282} States of America, the State of New Mexico, or of any county, city, town or school district of New Mexico, if such city, town or school district has a taxable valuation of real property for the last preceding year of at least one million dollars (\$ 1,000,000), and shall not have defaulted in the payment of any interest or sinking fund obligation or failed to meet any bonds at maturity at any time within five (5) years last preceding."

Two questions are thus presented. The first is whether or not the Water Meter Deposit Fund of the Village of Ruidoso is a type of revenue included within monies "for the public uses of such counties, cities, towns or school districts." In Opinion No. 3761 issued by this office on April 7, 1941, it was held in a similar situation that such funds were "Proprietary" rather than "governmental" in nature and were therefor not subject to the Act. We believe that this opinion in attempting to distinguish between a municipality operating in a governmental capacity and in a proprietary capacity, and in basing its result upon that distinction, was in error. It is our opinion, and we so hold, that irrespective of whether the Village of Ruidoso, in operating a Water Works, is operating in a governmental or proprietary capacity, it is nonetheless operating the Water Works for the benefit of the public and the revenues derived therefrom are for the public uses of the municipality. Opinion No. 3761 is therefore overruled.

The second question arising is whether or not the Water Revenue Bonds of the Village of Ruidoso are Bonds or negotiable securities of a city, or town of New Mexico. Revenue Bonds are not obligations of the municipality for which the full faith and credit thereof is pledged. They are Bonds issued by the municipality for which only the revenue of a particular Fund or Funds is pledged for payment. The question of whether the Legislature intended to limit the investment to general obligations of a municipality is not explicit in the statute, but it is our view that the requirement that the particular

municipal subdivision issuing the Bonds must have a taxable valuation of **real property** of at least one million dollars is a clear indication that the Legislature was referring to a security for the payment of which the taxing power would be available. Revenue Bonds do not fall within this category and it is our opinion that the municipal and school district securities referred to in this section are general obligation bonds of the municipality or school district meeting the other requirements of the Act.

It is therefore our opinion, that the Village of Ruidoso cannot legally invest any portion of its Water Meter Deposit Fund in revenue bonds, whether of the Village of Ruidoso or any other municipality or school district of the State.

By: Walter R. Kegel

Assist. Attorney General