

## Opinion No. 54-5957

May 26, 1954

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** LaVor W. Burnham Assistant District Attorney First Judicial District Aztec, New Mexico

{\*413} In your letter dated May 19, 1954 you enclose a letter from the Mayor of the Town of Farmington and request an opinion on three questions as follows:

1. Does a town, under its statutory authority to erect needful public buildings, have authority to purchase for municipal purposes a building already erected?

Sec. 12, Art. 9 of the Constitution limits the debt contracting power of municipalities but is not self-executing on the power to issue bonds.

Sec. 9 of Art. 9, however, provides as follows:

"Any money borrowed by the State, or any county district, or municipality thereof, shall be applied to the purpose for which it was obtained, or to repay {\*414} such loan, and to no other purpose whatever."

The statutory authority for bond issues by municipalities is contained in §§ 14-1804 and 14-2101. § 14-2101 authorizes municipalities to construct public buildings and to issue and sell bonds for the purposes mentioned.

§ 14-1804 authorizes municipalities to contract an indebtedness for the following purposes:

"For the purpose of erecting public buildings; for the purpose of construction or purchase of gas works for manufacturing illuminating gas, or purchase of illuminating gas."

Thus it is seen that municipalities have statutory authority to construct or erect public buildings but do not have specific authority for the purchase of such buildings and this seems significant in view of the language in § 14-1804 authorizing construction or purchase of gas works in the same sentence with the authority for erecting public buildings.

Under the Constitution, counties are authorized to become indebted for the purpose of erecting necessary public buildings and in Opinion No. 5083, which is enclosed herewith for your information, it was held that the power to become indebted to erect a public building does not include the power to become indebted to purchase such a

building, unless in connection with the purchase the building is so altered or reconstructed as to amount to the erection of a new or different building.

Since the purpose for which the bonds were issued and voted upon was for the erection of a public building, the use of the proceeds for the purchase of a building would probably violate Sec. 9 of Art. 9, above quoted.

It is our conclusion, therefore, that the Town does not have authority to purchase for municipal purposes a building already erected from the proceeds of a bond issue voted for the purpose of erecting such a building.

Your second question is as follows:

2. May the proceeds of such bond issue, which was approved by the people in the election, be used for the purpose of purchasing a building already erected, said building to be used as a town hall?

This question has already been answered in the answer to your question No. 1, since it was assumed that the authority to purchase was intended to mean authority to purchase from the proceeds of the particular bond issue.

Your third question was:

3. If the answer to question No. 2 is yes, may the town purchase such a building for an amount in excess of the bond issue voted for town hall purposes and give its mortgage for the balance of the purchase price in excess of the available money derived from the bond issue?

Since the answer to question No. 2 is negative, perhaps no answer to the third question is necessary. However, should a test case be brought and the Court hold that proceeds of the bond issue may be used for purchasing a public building, then it is our opinion that the building could not be purchased for an amount in excess of the bond issue by giving a mortgage for the balance of the purchase price in excess thereof. Such a mortgage would constitute a debt which has not been referred to the voters for approval. In this connection see *Wiggs vs. City of Albuquerque*, 56 N.M. 214, p. 224.

By: C. C. McCulloh

Assist Attorney General