

Opinion No. 55-6334

December 7, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Patrick F. Hanagan, District Attorney, Fifth Judicial District, Roswell, New Mexico

You have requested the opinion of this office on the question of whether the county of Chaves may issue its general obligation bonds for the purpose of equipping a county hospital.

Article IX, Section 10 of the Constitution of New Mexico limits the power of counties in this respect to the issuance of bonds for the construction of public buildings. In *Board of County Commissioners vs. McCulloh*, 52 N.M. 210, a divided court held that the word "construction" included the right to equip a building so as to make it available to use. This case however dealt with bonds issued for the original purpose of constructing a building. We feel that a different interpretation may result where the bonds are to be issued for the equipping of a building which has already been completed.

Since receipt of your letter we have received additional information as to the factual situation in Chaves County. Based upon the information which we have received, it is our opinion that the County of Chaves may, if the voters approve, issue additional bonds for the purpose of completing the construction of a county hospital. Since the proceeds of a bond issue for construction may be used to equip, then it may fairly be said that the construction of the building is not completed until such time as it has been equipped. The question should be submitted to the voters, however, upon the proposition of the completion of the construction rather than upon the sole question of equipping an already built hospital as contemplated by your original petition.

You also ask whether at the time of the election of the above mentioned proposition the electorate may also be asked to vote upon the question of a levy in excess of the 20 mill limitation for the operation and maintenance of the hospital. Such a procedure is, in our opinion, permitted under New Mexico law. We call to your attention, however, the fact that all registered voters are permitted to vote on the question of the levy, while only those who have paid a real property tax during the past year are permitted to vote upon the question of the issuance of the bonds. Especially where voting machines are to be used, if at all, care must be taken to prevent unauthorized persons from voting on the question of the issuance of bonds. We likewise wish to call to your attention the requirement that any two propositions submitted must be submitted in such a manner as to allow a free expression of choice by the voter.

It is also our suggestion that separate petitions be circulated upon the question of the tax levy.

We trust the foregoing will be of assistance to you.

By: Walter R. Kegel

Assistant Attorney General