

## Opinion No. 56-6458

June 5, 1956

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

**TO:** Mr. D. M. Smith, Jr., State Comptroller, State Capitol Building, Santa Fe, New Mexico

In your letter of May 23, 1956, you ask our opinion as to whether a municipal swimming pool may be construed to be a public utility to the extent that its revenue may be pledged to secure all or part of a revenue bond issue for the acquisition, construction or maintenance of such a swimming pool.

Section 14-39-8, N.M.S.A., 1953 Compilation, authorizes municipalities:

". . . to make and issue revenue bonds, payable solely out of the net income to be derived from the operation of any municipally owned utility, or sewer system, . . ."

The precise question which you ask was decided in the affirmative in *City of Belton vs. Ellis* (Tex. Civ. App.) 254 S.W. 1023. The Texas statute involved authorized municipalities to "own, maintain and operate . . . any public service or utility." The Texas Court held that a bathing pool was a public utility under the statute above quoted.

In a somewhat similar case the Kentucky Court of Appeals in *McKinney vs. City of Owensboro*, 305 Ky. 253, 203 S.W. 2d 24, held that a municipal swimming pool constituted a "public project" as defined in the Kentucky statute.

In a case involving a facility of like nature the Supreme Court of Oregon in *Capen vs. City of Portland*, 228 P. 105, held that a golf course was a public utility within the meaning of a charter authorizing a municipal corporation to acquire public utilities.

It appears from the foregoing authorities that municipal swimming pools are held to constitute "public utilities". The statute above quoted unquestionably gives municipalities the right to pledge the net income from public utilities by means of revenue bonds. It is, therefore, our opinion that a municipality may issue revenue bonds against the income from a municipal swimming pool, inasmuch as that swimming pool is a public utility in the contemplation of Section 14-39-8, N.M.S.A., 1953 Compilation.

By: Walter R. Kegel

Assistant Attorney General