

Opinion No. 56-6474

June 15, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Joseph B. Grant, State Treasurer, Santa Fe, New Mexico

There has been submitted to us for approval a transcript of proceedings in the matter of the issuance of bonds by the County of Luna, in the principal amount of \$ 100,000.00 for the construction of a fireproof county office and records building.

Article 9, Section 10 of the New Mexico Constitution provides:

"No county shall borrow money except for the purpose of erecting necessary public buildings. . . ."

It has been held that Section 11 of Article 10 of our Constitution relating to municipal indebtedness is not self-executing. *Lanigan vs. Gallup*, 17 N.M. 627, 131 P. 997. Since the language of the two sections is very similar we deem the cited case controlling and hold that likewise Article 9, Section 10 is not self-executing, and buildings to be constructed must fall within categories approved by legislation.

Section 15-49-1, N.M.S.A., 1953 Compilation, provides:

"The Legislature hereby declares that court-houses, jails, hospitals and public libraries are necessary public buildings."

The following sections authorize the issuance of general obligation bonds of counties for the construction of any of such buildings. It follows therefore that counties do not have the power to construct buildings which do not fall within those categories. The precise question for determination then is whether the building to be constructed may be considered as a court-house since it clearly does not fall within any of the other categories.

An examination of the proceedings indicates that the proposition was at various times stated in the following manner:

". . . On the proposition of constructing a building that will provide new and fireproof office and vault space for the present and future county records." (Petition)

"For county building bonds,' and 'against county building bonds,'" (Resolution)

"Building of a fireproof office building for said county." (Resolution)

"For the purpose of building a county office building." (Notice of Election)

"For the building of a county office building." (Ballot)

"For county office building bonds -- against county office building bonds." (Ballot)

"For county building bonds -- against county building bonds." (Certificate of Canvass)

From none of the above mentioned references and particularly from the Notice of Election and the Ballot can we say that the proposition submitted was identical to that of a court-house and thus within the statutory authorization. We must, therefore, in the absence of a decision of the New Mexico Supreme Court expressly upholding the validity of these bonds, decline to approve the same.

We have discussed this matter with the firms of Dawson, Nagel, Sherman and Howard of Denver, and Stinson, Mag, Thomson, McEvers and Fizzell of Kansas City, both of whom are widely recognized as outstanding bond attorney firms, and both of them agree with the conclusion above reached.

By: Walter R. Kegel

Assistant Attorney General