

## Opinion No. 57-304

November 26, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

**TO:** Honorable James C. Compton, District Attorney, Ninth Judicial District, Portales, New Mexico

### QUESTION

#### QUESTION

Do counties, pursuant to Section 6-4-8, N.M.S.A., 1953 Compilation, have authority and power, to issue bonds in order to acquire lands or buildings for playgrounds, recreation centers and other recreation purposes?

#### CONCLUSION

No.

### OPINION

#### ANALYSIS

Section 6-4-8, supra, is the section which, as hereafter limited, authorizes issuance of bonds for those general purposes set forth in Sections 6-4-1 to 6-4-9, both inclusive, N.M.S.A., 1953 Compilation. Generally, the purpose of the several sections is to enable counties, school districts, and municipalities to acquire, construct, operate, maintain, etc., certain recreation centers, or facilities, playgrounds, etc.

Section 6-4-1, supra, provides:

"This act shall apply to all municipalities, **counties** and school districts of the state of New Mexico" (Emphasis ours.)

and at first blush, would seem to call for an affirmative answer. Closer analysis compels us to reach a different conclusion, however.

Our case is made difficult by Section 6-4-1, supra, which says the Act applies to all counties, municipalities, and school districts, and Section 6-4-8, supra, the section authorizing the issuance of bonds which provides:

"The governing body of any municipality is hereby authorized to issue and dispose of negotiable bonds thereof, subject to the limitation and in accordance with article IX of

the Constitution, for the purpose of securing funds for the acquisition of lands or buildings for playgrounds, recreation centers and other recreational purposes and the equipment thereof, to the extent and in accordance with the provisions of sections 14-3615 to 14-3620, inclusive, of the 1941 Compilation."

In terms, it is limited to municipalities.

We do not think the statutory reference to Constitution of New Mexico, Article IX, is of any assistance, since the provision thereof (Section 10) relating to county indebtedness is a **limitation** upon, and not a **grant of power** to issue bonds. Board of Commissioners of Guadalupe County v. State, 43 N.M. 409, 94 P. 2d 515. The same thing is true of Article IX. Section 12, relating to municipal indebtedness. Henning vs. Town of Hot Springs, 44 N.M. 321, 102 P. 2d 25.

It is further to be noticed that Section 6-4-8, supra, in authorizing the issuance of bonds as therein limited, provides that such shall be to the extent and in accordance with Sections 14-3615 to 14-3620, 1941 Compilation. But these sections are limited to cities, towns and villages, and then only authorize bonds for purposes of water, sewage disposal, and fire protection.

In further support of our negative conclusion, it should be remembered that the power of counties to issue bonds is not lightly to be assumed. Counties have no inherent power to issue bonds, and can do so only pursuant to statutory or constitutional authority. Board of Commissioners of Guadalupe County vs. State, supra. We find such authority to be lacking.

In Opinion of the Attorney General No. 5127, dated February 11, 1948, the Honorable C. C. McCulloh held that Section 71-1008, 1941 Compilation (Pocket Supplement), now Section 6-4-8, supra, does not authorize school districts to issue bonds for recreational purposes. While such is not a precise answer to your question we think said holding can and should be extended as to counties. We now do so, for after all, counties as well as school districts are mentioned in Section 6-4-1, supra.