

Opinion No. 58-41

February 26, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Alfred P. Whittaker,
Assistant Attorney General

TO: Ben Chavez, Secretary, State Board of Finance, State Capital Building, Santa Fe,
New Mexico, Edward M. Hartman, Director, Department of Finance and Administration,
State Capitol Building, Santa Fe, New Mexico

QUESTION

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May a municipal corporation pay from funds of the current fiscal year several old accounts payable totaling a substantial amount assuming the sufficiency of current funds?

CONCLUSION

No.

OPINION

ANALYSIS

We understand that the Town of Grants has outstanding several accounts payable amounting to over \$ 9,000.00, in the aggregate, which accounts have been owing for several years. We also are advised that anticipated revenue from a municipal sales tax will provide sufficient revenues to satisfy these obligations. Under these circumstances, the State Board of Finance has approved the request of the Town of Grants for permission to pay these accounts, subject to an opinion from this office.

We appreciate that no government can long survive unless it stands ready to satisfy fully, fairly and promptly its obligations justly incurred. On the other hand, the Legislature long ago adopted the stringent but salutary principle that no inferior unit of government can legally obligate itself to pay any obligation which cannot be paid out of funds actually collected and belonging to the current fiscal year. Any such indebtedness is null and void. This principle is found in § 11-6-6, N.M.S.A., 1953, commonly known as the Bateman Act, which provides as follows:

"After March 12, 1897, it shall be unlawful for any board of county commissioners, city council, town trustees, board of education, board of trustees, or board of school directors of any school district, for any purpose whatever to become indebted or contract any debts of any kind or nature whatsoever during any current year which, at

the end of such current year, is not and cannot then be paid out of the money actually collected and belonging to that current year, and any and all kind of indebtedness for any current year which is not paid and cannot be paid, as above provided for is hereby declared to be null and void, and any officer of any county, city, town, school district or board of education, who shall issue any certificate or other form of approval of indebtedness separate from the account filed in the first place or who shall, at any time, use the fund belonging to any current year for any other purpose than paying the current expenses of that year, or who shall violate any of the provisions of this section, shall be deemed guilty of a misdemeanor and upon a conviction thereof shall be fined not less than one hundred (\$ 100.) nor more than one thousand dollars (\$ 1000.) or be confined in the county jail for a period of not more than six (6) months or by both such fine and imprisonment, in the discretion of the court trying the case."

The only relevant statutory qualification of the strict rule above stated is that found in § 11-6-9, which reads as follows:

"The void indebtedness mentioned in section 1227 (11-6-6) shall remain valid to the extent and for the sole purpose of receiving any money which may afterwards be collected and belongs to the current year when they were contracted, and the collection thereof, when made, shall be distributed pro rata among the creditors having the void indebtedness, and in the event of all the valid and void indebtedness of any current year are paid in full and there is money for that current year remaining, the sum shall be converted into the fund for the next succeeding current year."

The conclusion reached is supported by the decision in *Campbell v. Village of Green Tree*, 59 N.M. 225, 282 P. 2d 1101 (1955), where it was held that the right of a village officer to recover back salary was limited by the provisions of §§ 11-6-6 and 11-6-9, above quoted. It was there argued that the proceeds of a special assessment levied in connection with a utility bond issued which never materialized were available to pay plaintiff's claim, thus avoiding the bar of the Bateman Act. The Court rejected this contention as a circumvention of the Bateman Act and an improper diversion of the proceeds of the special assessment.

Although it was unnecessary for the Supreme Court to reach the present question raised by the availability of current funds not earmarked under the law (see § 14-42-26), in our opinion the instant case requires the same conclusion. By reason of the provisions of § 11-6-6, these accounts payable were improperly incurred and void, except as validated by § 11-6-9; and the availability of current revenues sufficient to satisfy these obligations is immaterial. Any other conclusion would render the Bateman Act nugatory and tacitly condone the abandonment of the legislative policy therein declared.