

Opinion No. 59-112

August 17, 1959

BY: HILTON A. DICKSON, JR., Attorney General

TO: Honorable Louis Trujillo State Representative Taos County P. O. Box 662 Taos, New Mexico

{*175} This opinion is in response to your recent request on the following question:

May the appropriation of \$ 50,000.00 from the New Mexico Irrigation Works Construction Fund made by Chapter 306 of the Laws of 1959, be applied to the sum of \$ 3,500.00 contracted to be reimbursed the New Mexico Interstate Stream Commission by the Llano Irrigation Company and the Cabresto Lake Irrigation Company, the said sum being used for preliminary investigations to determine the feasibility of a rehabilitation project on the Cabresto Dam and Reservoir?

In my opinion, the appropriated sum may not be applied for the repayment of the contracted sum.

Under date of March 7, 1958, the Llano Irrigation Company and the Cabresto Lake Irrigation Company contracted with the New Mexico Interstate Stream Commission for the performance of certain investigation work to be done in connection with Cabresto Dam and Reservoir so as to determine the feasibility of a project for the rehabilitation and repair of the said dam and reservoir. That contract provided for the repayment of the sum of \$ 2,000.00 in the event that the Commission and the companies jointly determined the project to be feasible and approved it. By supplemental contract dated November 10, 1958, the additional sum of \$ 1,500.00 was agreed upon to be spent for the same purposes and subject to the same conditions of repayment.

By Chapter 306 of the Laws of 1959, the legislature appropriated the sum of \$ 50,000.00 from the New Mexico Irrigation Works Construction Fund "for the purpose of constructing, improving and repairing the dam and appurtenances at Cabresto Lake". The said sum was to come from the moneys arising from the income obtained from the lands set aside by the Federal Government, the income of which was to be used for irrigation purposes. Because of the source of the fund, this office held by opinion dated May 5, 1959 and bearing No. 59-46 that the appropriation did not violate the provisions of Article IX, Section 14 of the New Mexico Constitution.

The question you have now presented is whether the appropriation may be applied in settlement of the contract obligation of the above mentioned irrigation companies to reimburse the Interstate Stream Commission in the sum of \$ 3,500.00. I am of the opinion that the appropriation may not be so used for two reasons. The first of these is that the legislation making the appropriation designates that the appropriated sum shall be used "for the purpose of constructing, improving and repairing" the Cabresto Dam

and Reservoir. The sum which the irrigation companies contracted to reimburse was not employed for the purpose designated in the statute. The \$ 3,500.00 was for preliminary investigation work. The word "construction" in its ordinary sense means to build or erect something which theretofore did not exist. See 8A, Words {176} and Phrases, page 471, et seq. Webster's Dictionary defines the word as meaning "to put together the parts of (something); to build". The contractual sum was for the purpose of investigating the feasibility only and while it may have been a necessary prerequisite to the construction, it bears no direct relationship to the purpose for which the appropriated sum is to be spent. Therefore, I am of the opinion that the contractual obligation does not fall within the purview of the appropriation.

Secondly, I am of the opinion that even had the statute intended and was so written as to cover the contractual obligation of the two irrigation companies, that, because of the language of Article IV, Section 24 and Section 32 of the New Mexico Constitution, it would have had to have been declared unconstitutional. Section 24, supra, provides in pertinent part:

"The legislature shall not pass local or special laws in any of the following cases: * * * or refunding money paid into the state treasury, **or relinquishing, extending or extinguishing, in whole or in part any indebtedness or liability of any person or corporation, to the state or any municipality therein; * * ***". (Emphasis supplied)

Section 32 reads as follows:

"No obligation or liability of any person, association or corporation, held or owned by or owing to the state, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released, postponed, or in any way diminished by the legislature, nor shall any such obligation or liability be extinguished except by the payment thereof into the proper treasury, or by proper proceeding in court."

The quoted portions of the above sections of the Constitution make it clear that the legislature would not be authorized to cancel the indebtedness of the two irrigation districts already existing by virtue of the contract and supplemental contract. To do so would be a special law in violation of the constitutional provisions and thus void.

It is my conclusion, because of the aforementioned reasons, that Chapter 306, Laws of 1959, may not be construed so as to permit the application of the appropriation in payment of the contractual indebtedness nor could such legislation be adopted as would have the effect to cancel such indebtedness.

I trust this will answer the inquiry made by you.

Thomas O. Olson

Assistant Attorney General