

## Opinion No. 59-64

June 15, 1959

**BY:** FRANK B. ZINN, Attorney General

**TO:** State Finance Board Santa Fe, New Mexico

The record of severance tax income for the current fiscal year, the 47th, is a sufficient standard for the determining of permissible indebtedness to be incurred under the provisions of Chapter 323, Laws 1959 for the 48th fiscal year.

### OPINION

{\*102} This is written in response to your inquiry seeking direction as to your authority and duty under the provisions of Chapter 323 of the Laws of 1959 relating to severance tax bonds.

Your specific question which I will answer here seeks an interpretation of Section 12 of that enactment limiting the amount of bonds which may be issued by your board in any one fiscal year. The section of law states as follows:

"Amount of Tax -- Security for Bonds. -- The legislature shall provide for the assessment, levy, collection and deposit into the severance tax bonding fund of a tax or taxes upon natural resources products severed and saved from the soil of this state sufficient to product an amount which is at least double the amount necessary to meet annual debt service charges on all outstanding bonds. **The state board of finance shall issue no severance fax bonds unless the aggregate amount outstanding, including the issue proposed, can be serviced with not more than fifty per cent of the annual deposits into the severance tax bonding fund, as determined by the deposits during the preceding fiscal year.**

The provisions of this section shall not be modified by the terms of any bonds hereafter {\*103} issued." (Emphasis supplied.)

Your inquiry was as to whether the record of severance tax income for the current fiscal year, the 47th, would be a sufficient standard for determining of permissible indebtedness to be incurred under the limiting provisions of the act for the 48th fiscal year.

It is my opinion that the 1959 enactment giving the particular fund into which all severance taxes are initially paid the title, "Severance Tax Bonding Fund" does not require that the State Board of Finance wait for a full year after the creation of that fund before it can have a standard for the issuance of bonds pursuant to the act. The naming of that fund in this enactment was merely giving a title to the existing fund to which all of the severance tax revenues were initially credited for administrative purposes. It is my

opinion that the 47th fiscal years' experience under the formula of Section 12 of the 1959 measure will provide the standard for action by the Board.

Complete figures for the 1958-59 fiscal year, the 47th, are not yet available for me to make a determination of your bond issuing authority for the forthcoming fiscal year. By way of example, utilizing the 1956-57, or 46th fiscal year figures, a determination of bonding authority under the provisions of Section 12 would be in accordance with the following example: e.g. Section 12, sets out the formula to be used in determining the amount of bonds which may be issued. That section provides that only 50% of the fund may be used in servicing bonds. This amount minus the amount needed for servicing obligations already outstanding would be the net amount available to service bonds issued under this chapter. Applying this formula to figures for the 46th fiscal year the result would be as follows:

(1) Total receipts from severance tax (46th fiscal year) \$ 8,854,430.00

(2) 50% of total receipts = \$ 4,427,215.00

(3) Amount needed to service obligations outstanding -- \$ 1,201,020.00

(4) Net amount available for servicing new bond issues:

\$ 4,427,215.00 - \$ 1,201,020.00 = \$ 3,226,195.00

Under this formula, had the law then been in effect the Board of Finance could have issued in the subsequent fiscal year, bonds in an amount requiring \$ 3,226,195.00 to service. This would be approximately \$ 25,000,000 -- assuming standard costs and average interest being 3% interest on a 10-year issue -- 10% maturing annually and service charges of \$ 1.00 per bond and 5 [cents] per coupon.

Because of the time involved I will not attempt in this letter to advise you of the specific step by step method required of you by Chapter 323 for the initiation of a bond issue. I will attempt to complete for you by your next meeting a complete outline of the necessary steps to be taken, their sequence together with suggested forms of resolution, bond, notices for public sale and other required steps.