

Opinion No. 60-45

March 11, 1960

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

TO: Hon. T. E. Lusk State Senator Eddy County Bujac Building Carlsbad, New Mexico

QUESTION

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A proposal has been made to construct a county building for Eddy County in Artesia, which would house certain of the County offices such as offices for County Treasurer, County Assessor, Sheriff, etc. These offices would be for deputies of the duly elected officials of the County who would continue to have their offices in Carlsbad, the County Seat. The construction of this building would be financed by general obligation bonds of the County or in the alternative a budget item paid for by ad valorem property taxes. You ask two questions in regard to these facts.

1. May all or part of this plan be done legally?
2. If any part of this plan is not presently legal, then what action must be taken to clear away any legal obstacles to the plan?

CONCLUSION

1. See analysis.
2. See analysis.

OPINION

{*399} In answer to the first part of your first question, we are of the opinion that there is no legal objection to having certain of the offices of the County located at a place other than the county seat, except that under Article VI, § 13 of the New Mexico Constitution, as implemented by Sec. 16-3-12.11, N.M.S.A., 1953 Comp. (PS), the District Court for the county must be located at the county seat. We have found no constitutional or statutory provisions requiring all other county offices to be located there. In particular, we do not view Article X, Sec. 3, relating to the removal of county seats without a three-fifths approval vote of the votes cast by qualified electors on the question of removal, as prohibiting your proposed plan, as under the facts as you have presented them to us, the county seat would remain in Carlsbad.

However, we are of the opinion that the construction of such a building cannot, under present statutory authority, be financed by means of a general obligation bond issue. Article IX, Sec. 10, New Mexico Constitution, reads as follows:

"No county shall borrow money except for the purpose of erecting necessary public buildings, or constructing or repairing public roads and bridges, and in such cases only after the proposition to create such debt shall have been submitted to the qualified electors of the county who paid a property tax therein during the preceding year and approved by a majority of those voting thereon. No bonds issued for such purpose shall run for more than fifty years." (Emphasis supplied).

This constitutional section has been implemented by Secs. 15-49-1 through 15-49-20, N.M.S.A., 1953 Comp., providing for the issuance of bonds for the purpose of erecting necessary buildings. Sec. 15-49-1 declares "necessary public buildings" as being court houses, jails, hospitals and public libraries. In our opinion, this statute spells out clearly what kinds of buildings are to be considered as necessary for the purpose of issuing bonds to finance their construction. The Constitution says that no bonds can be issued by counties except for the erection of necessary public buildings or the construction or repair of public roads. Therefore, except for the erection of hospitals (also covered by another bonding law at Secs. 15-48-1, et seq.), only those buildings enumerated by the statute may be constructed. Since this building cannot be a court house (the Constitution requires court to be held in the county seat) or any other of the enumerated class of buildings, it cannot be financed by means of a bond issue.

Our position is supported by New Mexico case law. The New Mexico Supreme Court has held in **Board of County Commissioners v. State, et al.**, 43 N.M. 409, 94 P. 2d 515, that Article IX, Sec. 10, is not a grant of the power to issue bonds, but a limitation upon such power. Further, in **Lanigan v. Gallup**, 17 N.M. 627, 131 P. 997, and **State ex rel. Haas v. Board of County Commissioners**, 32 N.M. 309, 259 P. 32, it was held that Article IX, Sec. 10, was not self executing, but that the issuance of bonds by counties must be according to statutes made and provided for such purpose.

Thus, our Supreme Court has {*400} recognized the need for following statutory provisions relating to county bond issues in order for such bonds to be legally issued. Since, in the case at hand, the statute does not allow the issuance of bonds for the erection of other than certain enumerated classes of buildings (such classes being declared as necessary public buildings), and your proposed building is not within such classes, its erection cannot be financed by a bond issue.

For further authority on this facet of your question, see Opinion No. 6464, dated June 15, 1956, in which we came to the same conclusion. You will note that eminent bonding house attorneys in Denver and Kansas City agreed with the conclusions set forth therein.

You ask what steps may be taken to remove the legal objections to the issuance of such bonds. In our opinion, an amendment to Sec. 15-49-1 adding "county office

buildings" or similar language to those classes of buildings declared as necessary, would be sufficient to allow such bonding. While it is clear that the legislature cannot declare, *carte blanche*, any possible class of building as necessary, without violating Article IX, Sec. 10, it certainly can declare certain other buildings other than those now enumerated as necessary. In our opinion, an added classification of "county office buildings" would stand up under any attack that it violated the "necessary public building" provision of Article IX, Sec. 10.

We turn now to a consideration of your alternative plan of financing, i.e., payment by *ad valorem* property taxation through an annual item in the county budget. We see no objection to this form of financing, so long as no debt of the county to those constructing the building or financing such construction is created. If a debt is created thereby, whether secured by a pledge of the credit of the county, or other form of credit transaction, Article IX, Sec. 10, would be violated, for as we have quoted, **no money may be borrowed by the county** except for the purpose of erecting necessary public buildings, etc., and the legislature has declared which classes of buildings it defines as necessary.

We cannot, as a practical matter, conceive of any party constructing or financing the construction of such a building relying on a year-to-year budget item for payment, without any county debt being created thereby, but if such would in the future be possible, we can see no legal objection to it.

By: Philip R. Ashby

Assistant Attorney General