

Opinion No. 62-62

April 24, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

TO: Mr. John M. Lenko, City Attorney, City Hall, Las Cruces, New Mexico

QUESTION

You state that a proposed ordinance which would repeal a duly enacted resolution creating a local public housing authority and which would prohibit the City of Las Cruces from participating in any public housing project has been presented to the Las Cruces City Commission. You therefore request an answer to the following question.

QUESTION

Assuming that the proposed ordinance would be valid, would it affect a housing project concerning which contracts have already been entered into?

CONCLUSION

No.

OPINION

ANALYSIS

The background facts giving rise to your opinion request are as follows. On September 25, 1951, the governing body of the City of Las Cruces adopted a resolution creating a local public housing authority after determining that a need for public housing existed in the City. This resolution was passed pursuant to the authority granted by the municipal Housing Act. Section 14-29-1, et seq., N.M.S.A., 1953 Compilation. Since that time some seventeen resolutions have been passed by the City Commission and/or the local public housing authority in connection with the establishment of public housing in the City of Las Cruces. In addition, the City of Las Cruces has entered into two binding **contracts** with the Public Housing Administration of the Federal government relative to the financing of a local public housing project. One is the Preliminary Loan Contract, the other is the Annual Contribution Contract.

A petition has now been presented to the City Commission pursuant to the provisions of Section 14-10-15, N.M.S.A., 1953 Compilation, proposing enactment of the following ordinance:

"That the City of Las Cruces shall not engage in nor participate in any public housing project in connection with any Federal housing authority, or alone, or with any other person, firm or corporation, and the City of Las Cruces shall not, directly or indirectly, acquire, own, lease, control or manage any real estate for the purpose of public housing, or any structures now used as dwellings, for such purpose."

The proposed ordinance would also repeal the 1951 resolution creating the local public housing authority as well as the various resolutions which have been passed in connection with a public housing project.

Section 14-10-15, supra, under which the proposed ordinance was presented to the Las Cruces City Commission, provides in pertinent part as follows:

"Upon petition of twenty per cent of the qualified voters of the city any measure may be proposed to the governing body of the city for enactment within thirty days of the time for filing the petition containing the proposed measure. If the governing body of the city either fail to act at all, act adversely, or amend the proposed measure, it shall be their duty to call an election within thirty days for submitting the measure to a vote of the people."

In the light of the limited question presented, it is unnecessary to dwell at length on the public policy aspect of a proposed ordinance which seeks to prohibit a city from participating in any public housing project. We would mention, however, that a reading of the Municipal Housing Act reveals a strong State Public Policy in favor of such projects if the local governing body deems such a project necessary. As an example, Section 14-29-23, N.M.S.A., 1953 Compilation, provides as follows:

"The exercise by the city or other state public body of the powers herein granted may be authorized by resolution of the governing body of such state public body adopted by a majority of the members of its governing body present at a meeting of said governing body, which resolution may be adopted at the meeting at which such resolution is introduced. **Such a resolution or resolutions shall take effect immediately and need not be laid over or published** or posted." (Emphasis added).

In addition, Section 14-29-14, N.M.S.A., 1953 Compilation, provides as follows:

"This act without reference to other statutes of the state shall constitute full authority for the authorization and issuance of bonds hereunder. **No other act or law** with regard to the authorization or issuance of bonds that provides for an election, requires an approval or **in any way impedes or restricts the carrying out of the acts herein authorized to be done shall be construed as applying to any proceedings taken hereunder or acts done pursuant hereto.**" (Emphasis added).

It is also to be noted that Section 14-29-26, N.M.S.A., 1953 Compilation, provides that the provisions of the Municipal Housing Act are controlling over any statutes which may be in conflict with the Act.

As previously mentioned, two binding contracts have been entered into by the City of Las Cruces with the Federal Public Housing Administration, and under Section 14-29-3, N.M.S.A., 1953 Compilation, the Federal government is now an obligee with the power to bring a:

". . . suit, action, or proceeding at law or in equity to compel said city and the officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of said city . . ."

Section 14-29-16, N.M.S.A., 1953 Compilation.

Thus our opinion is grounded upon Article II, Section 19, New Mexico Constitution, expressly forbidding the passage of a law which impairs the obligation of a contract. This constitutional inhibition is as applicable to city ordinances as it is to state statutes. 5 McQuillin, Municipal Corporations, Section 19.34 (1949); **Sears v. Akron**, 246 U.S. 242, 38 S. Ct. 245, 62 L. Ed. 688; **Los Angeles County v. Jones**, 6 Cal. 2d 695, 59 P. 2d 489; **Miami Shores Village v. Wm. N. Brockway Post No. 124 of the American Legion**, 24 So. 2d 33.

As the Court stated in **Murray v. Charleston**, 96 U.S. 432, 448, 24 L. Ed. 760, when discussing the contract impairment provision in the United States Constitution:

"There is no more important provision in the Federal Constitution" than this one, "and one of the highest duties" of the Supreme Court is "to take care the prohibition shall neither be evaded or frittered away. Complete effect must be given to it in all its spirit. The inviolability of contracts, and the duty of performing them, as made, are foundations of all well ordered society, and to prevent the removal or disturbance of these foundations was one of the great objects for which the Constitution was framed."

It is our opinion that the proposed ordinance, if enacted, could have no effect on the housing project which has already been contracted for.