

Opinion No. 62-99

July 25, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Carl P Dunifon, Assistant Attorney General

TO: Mr. Charles G. Caldwell, Environmental Sanitation Services, Department of Public Health, Santa Fe, New Mexico

QUESTION

QUESTIONS

1. Can a Mutual Domestic Water Consumers Association project be transferred or given to the newly created village?
2. If so, how do they proceed?
3. Can the village assume any indebtedness incurred by the association?
4. Would an election be required?

CONCLUSIONS

1. Yes, see analysis.
2. See analysis.
3. Yes, see analysis.
4. Yes, see analysis.

OPINION

ANALYSIS

1. The "Sanitary Projects Act" so named and entitled by Section 14-40-91, N.M.S.A., 1953 Compilation (P.S.), has no counterpart in the several states of our Union. The "Act" was conceived in the minds of the gentlemen who supervise the activities of the Department of Environmental Sanitation Services of the Department of Public Health of the State of New Mexico.

The New Mexico Supreme Court has decided no case or cases bearing upon or involving the Sanitary Projects Act. The courts of the several other states of the Union have not been called upon to interpret the provisions of the same or similar acts for the

very good reason that no such legislation appears upon their respective statute books. Paragraph A of Section 14 - 40 - 105, N.M.S.A., 1953 Compilation (P.S.), reads as follows:

"A. Upon the filing of each certificate and copy thereof as provided in section 14-40-107 New Mexico Statutes Annotated, 1953 Compilation, the persons so associating, their successors and those who may thereafter become members of the association constitute a body corporate by the name set forth in the certificate and by such name may sue and be sued, **have capacity to make contracts, acquire, hold, enjoy, dispose of and convey property real and personal and do any other act or thing necessary or proper for carrying out the purposes of their organization.**"
(Emphasis ours)

The language of this section is broad and comprehensive and was no doubt intended so to be by the authors thereof.

It is our opinion that the hereinabove quoted language provides ample authority for the conveyance of the assets of the Water Consumers Association to the recently incorporated Village of Chama.

2. Inasmuch as the transfer of the entire assets of the Association to the Village will bring about a dissolution of the Association for all practical purposes, it would seem imperative that the membership of the Association authorize its Board of Directors to take the action immediately hereinafter suggested.

A meeting of the Board of Directors of the Water Consumers Association should be formally called into session and a resolution passed by the terms of which all the right, title and interest of the Association be transferred to the Village of Chama. A deed for the real estate and a bill of sale for the personal property of said Association should follow the passage of such a resolution. The phraseology of such a resolution and the terms or contents of the deed and bill of sale should be prepared by the respective attorneys of the Association and the village.

3. The Village of Chama can assume any indebtedness incurred and presently owed by the Association by complying with the provisions of our constitution and the several New Mexico Statutes pertaining to the acquisition of a domestic water supply by a municipal corporation.

Article IX, Section 12 of the Constitution reads:

"No city, town or village shall contract any debt except by an ordinance, which shall be irrevocable until the indebtedness therein provided for shall have been fully paid or discharged, and which shall specify the purposes to which the funds to be raised shall be applied, and which shall provide for the levy of a tax, not exceeding twelve mills on the dollar upon all taxable property within such city, town or village, sufficient to pay the interest on, and to extinguish the principal of, such debt within fifty years. The proceeds

of such tax shall be applied only to the payment of such interest and principal. No such debt shall be created unless the question of incurring the same shall, at a regular election for councilmen, aldermen or other officers of such city, town or village, have been submitted to a vote of such qualified electors thereof as have paid a property tax therein during the preceding year, and a majority of those voting on the question, by ballot deposited in a separate ballot box, shall have voted in favor of creating such debt."

In the footnotes appearing under Article IX, Section 12 numerous New Mexico Supreme Court Decisions and Attorney General Opinions are cited.

Paragraph A of Section 14-40-16, N.M.S.A., 1953 Compilation (P.S.), reads:

"A. Any incorporated city, town or village is authorized and empowered, subject to the limitations and in accordance with the provisions of Article IX of the Constitution, to issue negotiable bonds for the purpose of securing funds for the construction, purchase, enlargement, improvement or extension of a system of supplying water, or a sewer system or to provide proper means for protection from fire."

Section 14-20-23, N.M.S.A., 1953 Compilation reads:

"Such cities, towns and villages shall also have power by ordinance to acquire by contract, purchase, gift and appropriation, or by condemnation in the same manner provided by law for the condemnation of property by railroad corporations, springs, wells, water rights, in or from flowing streams, and other water supplied, and to change the place of diversion thereof to any place selected by such municipality in order to render the same available for the use thereof. Any and all persons and corporations are hereby authorized and empowered to lawfully convey to any such city, town or village, for purposes hereof, any and all water, water rights and ditch rights, or any interest therein, held or claimed by such person, or corporation, for whatever purpose acquired or used by such grantor, and no change or use of such water of [or] water rights so conveyed, or point of diversion thereof, shall invalidate the right so acquired by such city, town or village, no matter for what purpose the same was originally held or used by such grantor. Any such city, town or incorporated village is hereby also authorized to acquire either within, or without, the boundaries thereof, rights - of - way, or other necessary ownership, or interest in, through, over and upon real estate, necessary, or advisable, for the construction of any such pipe-line, reservoir, sewerage pipes and appurtenances for use as a part of, or in connection with, such water system. Such city, town or village so constructing, or acquiring any such waterworks system, and acquiring the right to a water supply therefor is hereby authorized and empowered to use and supply such water for such sewer purposes, and for private and public use, for such compensation as may be determined by ordinances."

It would appear from a reading of the aforementioned sections of our constitution and statutes together with other sections of our statutes not mentioned herein that the

necessary funds for the liquidation of the indebtedness of the Association which must of necessity be assumed by the Village, can be raised by the Village.

4. I believe that our answer to Question No. 3 answers Question No. 4 of the request herein. An election to vote the necessary bonds for the liquidation of the indebtedness would be required.

The burden of working out the legal details of the acquisition of the water system will fall upon the shoulders of the attorney for the Village.

Obviously, if the property of the Association were not encumbered by debt, the legal mechanics of a transfer from the Association to the Village would be relatively simple. Unfortunately, however, as indicated by Question No. 3 propounded herein -- indebtedness does exist.