

Opinion No. 64-122

September 21, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Thomas A Donnelly, Assistant Attorney General

TO: Mr. Floyd Cross, Superintendent, State Park and Recreation Commission, Santa Fe, New Mexico

QUESTION

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May the funds made available to the State Park and Recreation Commission by Chapter 10, Special Session Laws of 1964, entitled "Motorboat Fuel Revenue Bond Act," be used to acquire by lease or purchase, land adjacent to a body of water used by the public for boating where it is contemplated that facilities will be furnished as stipulated in Chapter 10, Section 2, S. S. laws 1964?

CONCLUSION

Yes.

OPINION

ANALYSIS

The 1964 Special Session of the state legislature adopted the Motor Boat Fuel Revenue Bond Act (Chapter 10, S. S. Laws 1964) authorizing the state park and recreation commission to issue, with the approval of the State Board of Finance, revenue bonds in an aggregate amount not to exceed \$ 350,000.00, payable solely out of the motor boat fuel tax fund created by Section 64-26-19.2, N.M.S.A., 1953 Compilation.

Referring to the statutes which create the Motor Boat fuel tax (Chapter 76, Laws 1963), it is apparent that a special earmarked fund was provided by the legislature to be used by the State Park and Recreation Commission to construct, improve and furnish boating and related facilities in the state. These statutes provide as follows:

"64-26-19.1 Motor boat fuel tax -- Legislature finding and policy. -- The legislature finds that, of all the motor fuel sold in this state upon which a motor fuel tax is paid and not refunded, some is used to propel vessels on the waterways of the state. (It is the policy of this state to use the funds derived from the sale of such motor fuel to construct, improve and furnish boating and related facilities in this state."

"64-26-19.2. Motor boat fuel tax fund created. -- There is created in the state treasury the 'motor boat fuel tax fund.' Money in the fund is appropriated to the State Park Commission for use under the regular budgeting procedure of the state to **construct, improve and furnish boating and related facilities in this state under the jurisdiction of the State Park Commission.**" (Emphasis supplied).

The Motor Boat Fuel Revenue Bond Act (Appx. Vol. 2, Law 2.2, New Mexico Statutes Annotated, 1953 Comp.) details the manner and extent under which the State Park and Recreation Commission may issue bonds to carry out the purposes of such act. The bonds here involved are revenue bonds payable from a "special fund" (Sec. 62-26-19.2, supra) and thence do not constitute an indebtedness of the State. **Village of Deming v. Hosdreg Co.**, 62 N.M. 18, 303 P2d 920; **Wiggs v. City of Albuquerque**, 56 N.M. 214, 242 P2d 865; and **State v. Connelly**, 39 N.M. 312, 46 P2d 1097.

After careful analysis of such legislation, and review of the permissive purposes for which such bond moneys may be expended, we conclude that the commission may use the proceeds from the sale of Motor Boat Fuel Revenue Bonds to acquire by lease or purchase land adjacent to bodies of water, in order to construct, improve and furnish boating and related facilities in New Mexico for use by the general public.

It is fundamental that, as a prerequisite to the Commission's **constructing, improving and furnishing** of boating and related facilities for use by the general public, land or surface rights be first acquired by the State Park and Recreation Commission in order to secure a location for the placement of any building, facilities, improvements and related boating facilities. Clearly, such would fall within the contemplation of the permissive purposes of such act if the **primary purpose** of such land or water right acquisition is for the location and construction of structures or improvements for use directly incident to the furnishing of boating and related facilities for the general public.