

Opinion No. 64-17

February 21, 1964

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

TO: Mr. W. Peter McAtee, Special City Attorney for Villages of Estancia, Moriarty and Willard Tower Plaza Building, 117 Marquette, N.W., Albuquerque, New Mexico

QUESTION

FACTS

The cities of Estancia, Moriarty, and Willard, New Mexico, have pursuant to Section 14-40-75 N.M.S.A., 1953 Compilation, et seq., and pursuant to Section 4-22-1 N.M.S.A., 1953 Compilation, et seq., formed a public corporation authorized to issue and to sell bonds to acquire a jointly owned public gas utility system.

QUESTIONS

1. Does such proposal have to be approved by a referendum election held in each of the participating municipalities?
2. Would the bonds issued pursuant to such authority be tax exempt from State and local taxes?

CONCLUSION

1. No.
2. Yes.

OPINION

ANALYSIS

In your first question presented above inquiry is made as to whether a referendum election must be held upon the issue of the sale and issuance of revenue bonds by the EMW Gas Association, a non-profit corporation owned by the municipalities of Estancia, Moriarty and Willard, jointly, pursuant to Section 14-40-75, et seq., and Section 4-22-1, et seq., and which revenue bonds would be issued for the purposes of financing the acquisition of a jointly owned gas utility system.

Section 14-39-14 N.M.S.A., 1953 Compilation, provides in part that no **municipality** shall issue revenue bonds "under any other law providing for the issuance of bonds or

debentures payable out of the net income derived from the operation of any municipally owned utility, until the question of the purchase or construction of such utility shall at a regular election of municipal officers, or at a special election, be submitted to a vote of the qualified electors of the municipality."

Article 9, Section 12 of the New Mexico State Constitution requires an election on all propositions for the creation of municipal debt. The New Mexico Supreme Court in the case of **Village of Deming vs. Hosdreg Company**, 62 N.M. 18, 303 P. 2d 920, held **revenue bonds** "which do not engage the taxing power of the state, or a political subdivision thereof, are not within the prohibition of Const. Art. IX, §§ 12 and 13, either as to the requirement for approval of a popular referendum, or as exceeding constitutional limitations on indebtedness."

Section 14-40-87 N.M.S.A., 1953 Compilation (P.S.) provides that revenue bonds issued under the inter-community water or gas act "shall not be considered general obligations of the inter-community water or natural gas supply association issuing them."

From a careful study of the statutes and authorities cited above, it is our opinion that no constitutional requirement exists requiring a bond election for corporations formed under the facts of this particular case. Statutory provision contained in Section 14-39-14 N.M.S.A., 1953 Compilation, in our view requires a bond election where revenue bonds are to be retired from the net income obtained from municipally owned utilities. In our opinion Section 14-39-14, supra, does not apply where the utility is acquired as in this case. Under the facts of this particular instance, a distinction exists in that specific statutory authority is granted under Sections 14-40-84 and 14-40-86, N.M.S.A., 1953 Compilation for the Board of Directors of the incorporated non-profit association to issue bonds subject to the approval of the New Mexico Public Service Commission.

The second question stated above, inquires whether the revenue bonds if issued by the incorporated association under the facts of the instant case would be tax exempt from state and local taxes.

In our prior Attorney General's Opinion No. 63-147, dated October 30, 1963, it was held that since a municipality could incorporate a separately owned city utility system which would be partially tax exempt, then under Laws 1955, Chapter 18, as amended, and under the Joint Powers Agreement Act (Laws 1961, Chapter 135), two or more incorporated communities might organize under such laws a joint-inter-community non-profit water or natural gas corporation and enjoy the same tax advantages as would a municipality acting separately, if, (1) the corporate ownership is entirely vested in the participating communities, (2) is jointly controlled by each of the several municipalities, and (3) is conducted pursuant to the Joint Powers Agreement Act.

Article VIII, Section 3, of the New Mexico State Constitution, sets out in part:

"The property of the United States, the state and all counties, towns, cities and school districts, and other municipal corporations, public libraries, community ditches and all laterals thereof, all church property, all property used for educational or charitable purposes, all cemeteries not used or held for private or corporate profit, **and all bonds of the state of New Mexico, and of the counties, municipalities and districts thereof shall be exempt from taxation. . . .**" (Emphasis supplied).

Under the above constitutional provision, all bonds of municipalities are exempt from taxation. In line with our prior Attorney General's Opinion No. 63-47, supra, it is our opinion that Article VIII, Section 3, would be applicable to the bonds issued by a joint intercommunity non-profit water or natural gas corporation formed under the provisions of Laws 1955, Chapter 18, as amended, and under the Joint Powers Agreements Act (Laws 1961, Chapter 135).