

Opinion No. 65-159

August 23, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Mr. Alexander F. Sceresse, District Attorney, Second Judicial District, County Court House, Albuquerque, New Mexico

QUESTION

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May the county, by a bond issue, finance a convention center (auditorium) and may it participate in the financing of such an auditorium?

CONCLUSION

See analysis.

OPINION

{*268} ANALYSIS

Under Section 6-3-11, N.M.S.A., 1953 Compilation (P.S.) "The board of county commissioners of the several counties in this state having a population of twenty-five thousand, are hereby authorized and empowered to issue the bonds of such counties for the purpose of acquiring suitable sites for public auditoriums within their counties, and for the building of such auditoriums. Such public auditoriums are declared to be necessary public buildings."

The next section (6-3-12) provides that:

"The proceedings for calling, holding and canvassing the results of an election to determine whether such bonds are to be issued, the manner of issuance and the terms and provisions of such bonds, the sale thereof, the levy of taxes for the payment thereof, and the manner and time of payment thereof shall all be the same as is now or may hereafter be provided by law, with respect to bonds issued for the purpose of building courthouses, and, in general, all of the provisions of law with respect to **county court-house bonds** shall, so far as applicable, apply to the bonds herein authorized."

(Emphasis added).

Turning to the statutes relating to county courthouse bonds (Sections 15-49-1 through 15-49-20) we find that Section 15-49-6, supra, provides that "Before any bonds shall be

issued under this article, the same shall be ordered by a vote of the qualified electors of such county, in the same manner hereinafter provided."

The bond election may be initiated by a petition signed by not less than two hundred qualified electors of the county and presented to the board of county commissioners, or it may be initiated by the board of county commissioners after the board has adopted a resolution calling for an election, "which resolution shall set forth the object of the election and the amount of bonds to be issued." Section 15-49-7, supra.

The election on the auditorium bond issue "shall be held at the usual place of voting in such county, and shall be conducted by the officers or persons provided by law for the holding of ordinary or general elections in any such county, such election to be in all respects governed by, and the result declared according to, the rules and regulations provided by law for holding ordinary or general elections." Section 15-49-9, N.M.S.A., 1953 Compilation. Only qualified electors who are "property taxpayers" are entitled to vote at such election. Section 15-49-11, supra.

There are certain other facets of this general question that must be mentioned. In order to avoid violating the constitutional anti-donation provision (Article IX, Section 14) the county must either own the land on which the auditorium is built or must have a nonterminable {*269} lease for a period of time at least equal to the contemplated life of the building. Opinion No. 57-156.

While the term "auditorium" is not defined in the sections relating to counties, it is defined in the municipality section (Section 6-3-1, N.M.S.A., 1953 Compilation) as follows:

"The term 'auditorium' shall mean a public auditorium or building of a similar nature used for general civic purposes."

Presumably the definition of a county auditorium would be the same.

Under no circumstances could control of the auditorium be turned over to any person, association, corporation, organization, or group of persons. Section 6-3-15, N.M.S.A., 1953 Compilation, a portion of the county auditorium act, provides as follows:

"Any auditorium constructed pursuant hereto **shall be under the supervision and control of the board of county commissioners** of the county wherein it is located, and **shall be maintained and used for such purposes as the board of county commissioners may from time to time determine.**" (Emphasis added).

Of course, the auditorium could not be furnished free-of-charge to private groups. Otherwise the constitutional anti-donation provision would be violated.

As to the so-called "participation" by the county in financing the project, this could be done pursuant to Section 6-3-9, N.M.S.A., 1953 Compilation (P.S.) which authorizes

incorporated cities, towns and villages having a population of at least five thousand persons to enter into agreement with officers of the county for "erection of public auditoriums or buildings of a similar nature."

The only method of participation with any non-public organization would be contingent upon the agreement providing that the auditorium was owned by the county and was under the absolute control of the board of county commissioners.