

Opinion No. 65-66

April 21, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Thomas A. Donnelly, Assistant Attorney General

TO: Clara Lewalling, County Clerk, Quay County Courthouse, Tucumcari, New Mexico

QUESTION

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Is Section 5-9-2, N.M.S.A., 1953 Compilation, known as the Facsimile signature law applicable to Section 11-6-25, N.M.S.A., 1953 Compilation?

CONCLUSION

Yes.

OPINION

{*113} ANALYSIS

Your inquiry poses the question of whether the provision of the Uniform Facsimile Signature Act (Section 5-9-2, N.M.S.A., 1953 Compilation) has application to bonds and coupons issued pursuant to Section 11-6-25, N.M.S.A., 1953 Compilation, relating to advance refunding bonds and coupons of counties, municipalities, or school districts.

We conclude definitely that the Uniform Facsimile Signature Act does apply to the bonds issued by such public bodies as advance refunding bonds and the coupons thereunder. Section 5-9-2, N.M.S.A., 1953 Compilation provides:

"Facsimile signature. -- Any authorized officer, after filing with the secretary of state his manual signature certified by him under oath, may execute or cause to be executed with a facsimile signature in lieu of his manual signature:

A. Any public security, provided that at least one signature required or permitted to be placed thereon shall be manually subscribed, and

B. Any instrument of payment Upon compliance with this act [5-9-1 to 5-9-6] by the authorized officer, his facsimile signature has the same legal effect as his manual signature."

Section 5-9-1, N.M.S.A., 1953 Compilation, defines the term "public security" as a "bond, note, certificate of indebtedness or other obligation for the payment of money,

issued by this state or by any of its departments, agencies, or other instrumentalities or by any of its political subdivisions."

Generally, it is clear that the term "political subdivisions" embraces counties, municipalities or local school districts. Section 11-2-63, N.M.S.A., 1953 Compilation, defines the term "local public body" to include every "political subdivision of the State of New Mexico which expends public money from whatever source derived, including but not limited to **counties**, county institutions, boards, bureaus or commissions; incorporated cities, towns or villages; drainage, conservancy, irrigation **or other districts:**"

Since under Section 11-6-25, supra, counties, municipalities and school districts are empowered, with the approval of the state department of finance and administration to issue negotiable refunding coupon bonds for the purpose ~~{*114}~~ of refunding any general obligation bonded indebtedness of such school district, we are of the opinion that **such bonds** may be issued under the provisions of the Uniform Facsimile Signature Act, supra. Section 11-6-25, supra, provides in applicable part:

"Such refunding bonds shall be negotiable in form, shall refer to the act under which they are issued, shall be executed in the name of the county, municipality, or school district, **Signed by the chairman or president of the governing body** sealed with the seal of the county, municipality, or school district **and attested by the county, municipality, or school district clerk or secretary**. The interest accruing on such refunding bonds shall be payable semiannually and shall be evidenced by semiannual interest coupons thereto attached, bearing the engraved facsimile signature of the chairman or president of the governing body in office at the time said bonds and coupons are prepared and ordered to be engraved or lithographed, and when so executed, such coupons shall be the binding obligations of the county, municipality, or school district according to their import. . . ." (Emphasis added).

Considering the purpose of the Uniform Facsimile Act discussed above (Section 5-9-2 N.M.S.A., 1953 Compilation) we think that patently the legislative intention was that the provisions of such act be applicable to the signatures affixed to advance county, municipality or school district refunding **bonds** provided for in Section 11-6-25, N.M.S.A., 1953 Compilation. Such two statutes in our opinion should be construed in pari materia to carry out the express purposes of both acts. **State v. Prince**, 52 N.M. 15, 189 P.2d 993. In-so-far however, as negotiable coupons of advance county, municipality or school district refunding bonds are concerned, we think that the specific wording of Section 11-6-25, supra, is applicable necessitating only that such coupons bear "the engraved facsimile signature of the chairman or president of the governing body in office at the time said bonds and coupons are prepared and ordered to be engraved or lithographed." The latter portion of the statute is specifically controlling in our opinion in respect to signatures required to be placed upon coupons attached to advance refunding bonds of such public bodies.