

## **Opinion No. 65-51**

March 22, 1965

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

**TO:** Mr. Harry C. Naugle, Director, Civil and Defense Mobilization, P.O. Box 4277, Santa Fe, New Mexico

### **QUESTION**

#### QUESTIONS

1. Where the county treasurer is the disbursing agent for normal transactions handled by a county Civil Defense Agency, is it legal for the Civil Defense Agency to have a separate checking account?
2. Is it legal for the County Civil Defense Director to borrow money and deposit such money in a special checking account?
3. Would the county be liable for any such loan made to the County Civil Defense Director?

#### CONCLUSIONS

1. No. see analysis.
2. No.
3. No, but see analysis.

### **OPINION**

#### {\*87} ANALYSIS

Initially, some discussion of the state law applicable to the State Office of Civil and Defense Mobilization is required in order to fully dispose of your questions.

Section 9-13-1 through 9-13-24, N.M.S.A., 1953 Compilation provide for the creation and operation of a state office of civil and defense mobilization and local offices in the political subdivisions of the state.

Under the authority of Section 9-13-20, N.M.S.A., 1953 Compilation, "Each political subdivision of the State is authorized to establish a local office of civil and defense mobilization responsible to the governing body, in accordance with the state civil and

defense mobilization plan. . . Every local director of civil and defense mobilization shall be appointed by the governing body subject to the approval of the state director and such local director shall have direct responsibility for the organization, administration and operation of the civil and defense mobilization program of such political subdivision, subject to the direction of the state director."

Regarding the handling of finances of local civil and defense mobilization offices, Section 9-13-22, N.M.S.A., 1953 Compilation sets out in part that:

"Each political subdivision of the state shall have the power to make appropriations in the manner provided by law and subject to the limitations of the law, for the payment of expenses of civil and defense mobilization. . . ."

Turning now from the statutes applicable to local civil and defense mobilization offices to the general statutes bearing upon county finances we find Section 11-2-4, N.M.S.A., 1953 Compilation, bears significantly upon the first question. This section states in applicable part:

"The board of county commissioners in each county in the state, shall, ex-officio and without additional compensation, constitute a county board of finance, and as such shall have supervision over the determination of the qualifications of, and selection of, banks to receive public moneys of their respective counties . . . The county clerk in each county shall ex-officio and without additional compensation act as clerk of such county board of finance. . . ."

**The county treasurer of each county in the state shall have supervision of the deposit and safekeeping of the public moneys of their respective counties and all such moneys which may at any time come into or be in their possession as county treasurers . . . for the use and benefit of the state or of any county, municipality or district or of any subdivision of any county. . . and by and with the advice and consent of the respective boards of finance having jurisdiction over the respective funds shall designate banks qualified to receive on deposit all moneys entrusted in their care.** (Emphasis added).

Section 11-2-70, N.M.S.A., 1953 Compilation declares that "every claim for payment of public money shall be made upon a public voucher. All public vouchers shall be in the form and contain the information required by the director of the department of finance and administration. All purchase {88} vouchers for goods and services, other than personal shall be accompanied by supporting invoices. The payee shall certify either on the voucher or on the supporting invoice the claim as true and correct. Vouchers for the reimbursement of all public officers and employees must have receipts attached for all money claimed, except that reimbursement vouchers for claims of mileage and per diem at standard rates need not be accompanied by receipts. All vouchers must be certified as true and correct by the officer or employee designated to approve payments of claims against state agencies and local public bodies . . . The director of the

department of finance and administration may require that payroll, reimbursement, refund or other vouchers be sworn to by the certifying officer or payee."

Under the above sections since a county civil and defense mobilization office is a county agency it must maintain its allocated funds with the county treasurer and draw on these funds by preparation of a voucher and a warrant.

Section 11-2-57, N.M.S.A., 1953 Compilation spells out the duties of each local public body, to furnish and file with the local government division of the State Department of Finance and Administration a budget. This statute also states that the local government division shall **"supervise the disbursement of funds to the end that expenditures will not be made in excess of budgeted items or for items not budgeted, and that there will not be illegal expenditures."**

From the statutes quoted supra, it is our opinion that a local county office of Civil and Defense Mobilization may not maintain a separate checking account for public funds of such agency. The laws cited above contemplate that such county money will be in the control of the county treasurer and subject to disbursement procedures as promulgated by the Local Government Division of the State Department of Finance and Administration. Federal money available to the Local Civil and Defense Mobilization county office should be either disbursed from Federal sources in accordance with Federal regulations or such money paid over to the county treasurer for disbursement by the county Civil Defense Mobilization office according to an approved budget. No authority exists for such local office to establish separate checking account for public funds.

Your second question inquires whether it is lawful for a county civil defense director to borrow money and deposit such money in a special checking account. We conclude definitely that the answer is negative.

Article IX, Section 10 of the New Mexico State Constitution states that:

"No county shall borrow money except for the purpose of erecting necessary public buildings or construction or repairing public roads and bridges, and in such cases only after the proposition to create such debt shall have been submitted to the qualified electors of the county who paid a property tax therein during the proceeding year and approved by a majority of those voting thereon. No bonds issued for such purpose shall run for more than fifty years."

This constitutional provision interdicts against any county borrowing money so as to create a public debt, except as provided in this section. Under the facts of your letter we hold that a county officer may not in the name of a county agency incur a public debt of the county except as provided in article IX, Section 10. In addition Article IX, Section 13 of the State Constitution also sets a county debt limitation.

Finally, your third inquiry poses the question of whether a county would be responsible for any loan made to a county civil defense {\*89} director? We hold that the answer is no, since a debt of the county may be incurred only as spelled out in Article IX, Section 10 of the State Constitution and further, since payments and expenditures of public moneys must be based upon vouchers and warrants, no authority exists for a county officer to obligate a county for debt, except as provided by law and the State Constitution.

Thus, any act of a county officer purporting to borrow money in the name of the county, except as provided by law, is illegal and would be of no binding force against the county.