

Opinion No. 66-107

August 26, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General James V. Noble, Assistant Attorney General

TO: Luis L. Fernandez, Chief, Local Government Division, Department of Finance & Administration, State Capitol Building, Santa Fe, New Mexico

QUESTION

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May a municipality expend funds for the purpose of publishing a newspaper advertisement to advise residents of the municipality of the names of various municipal officers and employees and incidentally convey seasons greetings?

CONCLUSION

Yes.

OPINION

{*144} ANALYSIS

Under the facts furnished, the Christmas message is incidental to the information furnished the public of the names of the various municipal officers and employees and this question is answered on this basis. It is also necessarily assumed that the placing of the advertisement was duly authorized by the governing body.

Section 14-11-3, N.M.S.A., 1953 Comp. (P.S.) grants to the governing body of a municipality the power and duty of managing and controlling the finances of the municipality. Under the provisions of Section 14-17-1, N.M.S.A., 1953 Comp. (P.S.), a municipality may exercise privileges that are incident to corporations of like character or degree that are not inconsistent with the laws of New Mexico. Section 14-36-1, N.M.S.A., 1953 Comp. (P.S.) designates the governing body of the municipality as its board of finance to control the finances of the municipality and provides procedures. Additionally Sections 11-6-3, 11-2-57, 11-2-61 inclusive, N.M.S.A., 1953 Comp., contain provisions relating to municipal finances.

There is no specific constitutional or statutory prohibition against an expenditure of the nature above stated. There is likewise no specific constitutional or statutory authorization for such an expenditure. If, therefore, it is the exercise of a privilege incident to corporations of like character or degree, then the expenditure may be legally

made. Conversely, if it is not such a privilege, such an expenditure cannot legally be made.

It is stated in **McQuillin, Municipal Corporations**, (3rd ed.), Vol. 15, Section 39.19, p. 33 that:

"All appropriations or expenditures of public money by municipalities and indebtedness created by them, **must be for a public and {*145} corporate purpose** as distinguished from a private purpose, at least, unless the powers of the particular municipality in regard, thereto, have been enlarged by the legislature, which is itself limited in its power to authorize expenditures or indebtedness for other than public purposes. This includes indebtedness created by the issuance of bonds. So taxes levied by a municipality must be for public purpose. And in determining what is a public purpose, it is not material whether the question arises in connection with (1) expending moneys on hand, (2) creation of floating indebtedness, (3) creation of bonded indebtedness, or (4) levy of taxes.

. . . .

. . . Moreover, the public purposes for which cities may incur liabilities are not restricted to those for which precedent can be found, but the test is whether the work is required for the general good of all the inhabitants of the city.

What is a public municipal purpose is not susceptible of precise definition. While the question of what is and what is not a public purpose is initially a legislative responsibility to determine, in its final analysis, it is for the courts to answer." (Emphasis added.)

Under the state of facts furnished the municipality did legislatively determine that the expenditure was for a public purpose.

McQuillan, supra, in Section 39.21, p. 40, gives illustrations of various expenditures that are considered to be for a public purpose and expenditures that have been held illegal as not being for a public purpose. It states that it has been held that radio broadcasts of meetings of city employees were for public purposes, as were expenditures for advertising the city, its resources, advantages, etc., although there is a conflict of authority on this. It has also been held that expenditures for conducting an historical pageant for the purpose of educating the residents of a city were unauthorized. However, none of the authorities cited by the text are of any particular assistance since they depend upon specific statutory or charter authorization or upon constitutional prohibitions.

The same rules set forth in **McQuillan, Municipal Corporations**, supra, are also set forth in **Rhyne, Municipal Law**. He states, at page 346, that a municipality may publicize its position on a public question as such is a public purpose. Similarly, the furnishing of City Council Chambers with portraits of distinguished citizens has been

held to be a public purpose so that municipal funds could legally be expended, **Reynolds, v. Albany**, N.Y. 8 Barb. 597.

Our laws do not require that municipal expenditures be made only for "necessary" expenses and even if such a construction be placed on expenditures our Supreme Court has had occasion to construe such language. In the case of **Hutcheson v. Atherton**, 44 N.M. 144, 99 P.2d 462, the court rejected the contention that "necessary" meant "indispensable" as used in a statute authorizing municipalities to issue bonds for the construction of "necessary public buildings." It adopted the rule that "necessary" is to be construed as meaning "convenient or useful or essential to another". The court then held that the decision by the legislature that a certain building was "necessary" within such a definition, **while not binding on the court was, entitled to great weight.** Similarly the decision by the governing body of a municipality that a certain expenditure was for a public purpose, while not binding, **is entitled to great weight. Dennis v. Raleigh**, 116 S.E. 2nd 923, 253, N.C. 400. It appears that the legislative body of the municipality did decide that the placing of the names of the municipal officers and employees in the newspaper for the information of its citizens was serving a public purpose. The fact that this was a custom of long standing, is of no significance. **McQuillan, Municipal Corporations**, supra, Section 39.17, p. 33. However, the determination is entitled to great weight and unless clearly and as a matter of law, wrong, it should not be overturned. It does not so appear {*146} under the stated facts and the authorized expenditures would be a valid exercise of its corporate authority.