

Opinion No. 66-118

October 24, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Donald W. Miller, Assistant Attorney General

TO: Mr. Luis L. Fernandez, Chief, Local Government Division, Department of Finance and Administration, Santa Fe, New Mexico

QUESTION

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May a municipality issue revenue bonds for the purpose of improving fire fighting facilities within the municipality and secure the bonds by pledging city sales tax collections?

CONCLUSION

No.

OPINION

{*159} ANALYSIS

The purposes for which revenue bonds may be issued are limited. The pertinent statute is Section 14-30-1, N.M.S.A., 1953 Compilation (P.S.). It reads as follows:

"A. In addition to any other law authorizing a municipality to issue revenue bonds, a municipality may issue revenue bonds for the purpose of:

- (1) acquiring a municipal utility; or
- (2) making necessary improvements, extensions, repairs and betterments to the municipal utility, and may pledge irrevocably the income of the utility for payment of the interest and principal of the revenue bonds."

It should be noted that such bonds are to be used only for municipally owned utilities.

A municipally owned utility is defined in Section 14-30-1.1, N.M.S.A., 1953 Compilation (P.S.), as including but not necessarily limited to "water-works, gas works, electric systems, sewer systems, swimming pools, golf courses, recreational projects, or any other self-liquidating public projects required to furnish public services for any incorporated city, town or village." In the opinion of this office, the word "self-liquidating" must be taken to mean self-supporting.

It is the opinion of this office that the methods available to a municipality to enable it to enlarge or improve fire fighting facilities are limited to Section 14-29-5, N.M.S.A., 1953 Compilation (P.S.). This section allows the issuance of general obligation bonds for certain purposes. It states, in part:

{*160} "Subject to the Limitations and in accordance with article 9 of the Constitution of New Mexico and sections 11-6-13 and 11-6-14 New Mexico Statutes Annotated, 1953 Compilation, a municipality may issue and dispose of negotiable bonds for the purpose of securing funds for:

* * *

(F) Providing proper means for protection from fire including but not necessarily limited to purchasing apparatus for fire protection and providing, enlarging and improving fire equipment and facilities."

Because of the above statutes, it is the opinion of this office that a municipality may not issue revenue bonds secured by a pledge of city sales tax collections, for the purpose of improving its fire fighting facilities. A municipality is limited to the authority given it in the statutes. Therefore, a municipality must improve its fire fighting facilities through the issuance of several obligation bonds under Section 14-29-5 rather than revenue bonds.