**Opinion No. 66-121**

November 9, 1966

**BY:** OPINION OF BOSTON E. WITT, Attorney General George Richard Schmitt, Assistant Attorney General

**TO:** Honorable Jack M. Campbell, Governor, State of New Mexico, Santa Fe, New Mexico

## QUESTION

FACTS

A proposal has been submitted by Mr. Lincoln O'Brien, a member of the State Board of Finance, regarding the borrowing of money for the various state institutions and political subdivisions through the issuance of short term State Treasury Bills by said Board. The Bills would be issued and the money borrowed on the pledge of the general credit of the state and would be turned over to the state institutions seeking such funds. Both principal and interest on the Treasury Bills would be repaid by the borrowing institution out of its own funds. The purpose and effect of this proposal is to allow the various state institutions to borrow money at an effective lower interest rate than they ordinarily would through the issuance of long term bonds, as is explained in the proposal attached herewith.

QUESTION

Can this proposal be carried out under existing law?

CONCLUSION

No, such proposal would, in all probability, require a state constitutional amendment and implementing legislation.

## OPINION

*{*163}* ANALYSIS

The primary factor to be considered in this proposal is that it creates a state debt, against which the general credit of the state is pledged. As such, the state constitutional provisions respecting state indebtedness and the restrictions thereon must be considered. They are Sections 7, 8 and 9 of Article IX of the New Mexico Constitution and are set forth in their entirety as follows:

Section 7. [State indebtedness -- Purposes.]

The state may borrow money not exceeding the sum of two hundred thousand dollars in the aggregate to meet casual deficits or failure in revenue, or for necessary expenses. The state may also contract debts to suppress insurrection and to provide for the public defense.

Section 8. [Restrictions on state indebtedness.]

No debt other than those specified in the preceding section shall be contracted by or on behalf of this state, unless authorized by law for some specified work or object; which law shall provide for an annual tax levy sufficient to pay the interest and to provide a sinking fund to pay the principal of such debt within fifty years from the time of the contracting thereof. No such law shall take effect until it shall have been submitted to the qualified electors of the state and have received a majority of all the votes cast thereon at a general election; such law shall be published in full in at least one newspaper in each county of the state, if one be published therein, once each week, for four successive weeks next preceding such election. No debt shall be so created if the total indebtedness of the state, exclusive of the debts of the territory, and the several counties thereof, assumed by the state, would thereby be made to exceed one per cent of the assessed valuation of all the property subject to taxation in the state as shown by the preceding general assessment.

Section 9. [Use of borrowed funds.]

Any money borrowed by the state, or any county, district, or municipality thereof, shall be applied to the purpose for which it was obtained, or to repay such loan, and to no other purpose whatever.

In summary, the Constitution as observed above, provides that the state may borrow money for certain specified purposes but not exceeding the sum of $ 200,000. Any other state debt to be created must be authorized by law for a specific work or object, and such law must specifically provide for an annual tax levy sufficient to repay the debt. A most important factor to consider is that any such law, in order to become effective, requires *{*164}* a referendum. It must be submitted to the qualified electors of the state and must receive a majority of all the votes cast thereon at a general election. Further, any debts so created cannot exceed 1% of the assessed valuation of all the property subject to taxation in the state.

The constitutional provisions cited above show that Legislation by referendum, is at the very least required in order to give legal effect to the proposal. Obviously the money to be borrowed is not to meet casual deficits or failure in revenue or for necessary expenses as is provided in Section 7 of the Constitution. So the applicable constitutional provision with which we are concerned would be the referendum provision -- Section 8 cited above. However, it is doubtful whether the proposed debt could be considered as being for a "specified work or object" as is specified in Section 8 before a referendum may be submitted. Even if it were, the Board of Finance in the event such law was enacted would have to provide for an annual tax levy to pay back the money borrowed which would substantially defeat the purpose of said proposal. Because of the extreme difficulty of being able to surmount these constitutional hurdles, it is our conclusion that a separate constitutional amendment as well as specific, implementing legislation is required before the proposal in question could be given legal sanction.