

Opinion No. 68-14

January 31, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Thomas F. McKenna, Vice Chairman Capitol Buildings Improvement Commission
Santa Fe, New Mexico

QUESTIONS

FACTS

In 1965, \$ 3,000,000 worth of severance tax bonds were issued by the State Board of Finance on behalf of the Capitol Buildings Improvement Commission, hereinafter referred to as the CBIC, pursuant to Section 6-2-22.1, N.M.S.A., 1953 Comp. (being Laws 1965, Ch. 246, Sec. 1). This statute authorized the use of the bond money" . . . to carry out the land acquisition, land improvement, land alteration, and additional building design and construction provisions of the State Capitol Expansion Act . . ." A bill has been introduced in the Senate which would extend the authority of the CBIC to expand this bond money. Senate Bill No. 28 would give the CBIC authority to expend this bond money" . . . to carry out the land acquisition, land improvement, land alteration and additional building design and construction provisions of the State Capitol Expansion Act, **and to equip, remodel and furnish capitol facilities . . .**" (The underlined material indicates the proposed amendment to the section.)

May the legislature by such amendment extend the authority of the CBIC to expend the unused funds derived from the sale of severance tax bonds?

CONCLUSION

See analysis.

OPINION

{*29} ANALYSIS

No specific constitutional barrier exists which would prohibit the modification of the authority of the CBIC to expend these monies. It has been suggested that Sec. 9, Article IX, Constitution of New Mexico, would operate to prohibit this modification of the CBIC authority. Section 9, Art. IX, provides as follows:

"Sec. 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."

However, in the case of **State v. New Mexico State Authority**, 76 N.M. 1, 411 P.2d 984 1966), the Supreme Court of New Mexico construed Sections 7 and 8 of Article IX of the Constitution as applying only to general obligations of the State. The reasoning in that case was that these sections constituted a unified plan set up by the framers of our Constitution by which it was intended that only general obligation debts be limited by the Constitution. We are of the opinion that while that case did not construe Section 9, Article IX the same reasoning applies there. This office has previously concluded that Article IX, Section 9 applies only to general obligation debts of the State and the other subdivisions listed. Attorney General Opinion No. 65-27, issued February 11, 1965, Therefore, based upon the reasoning of the case of **State v. New Mexico State Authority**, supra, and the earlier opinion of this office, we conclude that Article IX, Section 9 is not applicable to these bonds.

It has also been suggested that the proposed legislation would impair the bondholders' contract with the State in violation of the United States Constitution, Art. 1, Sec. 10, and New Mexico Constitution. Art. II, Sec. 19. We are of the opinion that there would be no impairment of contract under the doctrine expressed by the New Mexico Supreme Court in **Streit v. Lujan**, 35 N.M. 672, 6 P.2d 205 (1931).

We now turn to more generalized considerations involved in the proposed legislation. The resolution authorizing the issuance of these severance tax bonds contains the following provisions:

"(2) That the obligation of the State to the holders of the bonds herein authorized shall be limited to applying the designated funds, as herein set forth, to the payment of the principal of and interest on said bonds and limited to complying with the other contractual provisions herein imposed on the State;

(3) That the payment of said bonds shall not be secured by a mortgage, lien, pledge or other encumbrance on or of any real or personal property, or both, of the State, except for the lien on and pledge of funds herein designated."

The form of the bond issued contained the following language:

"This bond is issued by the State of New Mexico . . . for the following purposes:

B. \$ 3,000,000 to acquire land for additional capitol building expansion and improvements."

The resolution also gives any person or officer being a party in interest the right to sue to enforce and compel the performance of the provisions of the Severance Tax Bonding Act.'

{*30} The bonds are designated as constituting special obligations of the State of New Mexico and are payable solely from monies credited to the severance tax bonding fund.

We are of the opinion that no legal impediment exists which would prohibit the passage of the proposed Senate Bill No. 28.

By: Paul J. Lacy

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