

## **Opinion No. 69-39**

May 7, 1969

**BY:** OPINION OF JAMES A. MALONEY, Attorney General Gary O'Dowd, Deputy Attorney General

**TO:** Jerry Wertheim, Attorney, Town of Vaughn, Vaughn, New Mexico

### **QUESTIONS**

#### **FACTS**

The Town of Vaughn is contemplating entry into a lease purchase agreement whereby it leases with an option to purchase land and building from a contractor who will build the building. The contractor will borrow the money from the local bank to finance the building of the fire station. The lease purchase agreement will be assigned to the bank by the contractor to secure payment of the promissory note. The lease purchase agreement and the promissory note will last longer than a single administration of the Town of Vaughn.

#### **QUESTIONS**

1. Can the Town of Vaughn enter into such a lease purchase agreement which extends beyond the term of the present council and mayor?
2. Is there any manner or method in which the present administration can earmark receipts so that these receipts will go to the payment of the amount under the lease purchase agreement?
3. Can this earmarking bind future councils and mayors of the Town of Vaughn?
4. Can the property on which the fire station exists and which is under the lease purchase agreement with the Town of Vaughn be assessed for ad valorem tax purposes in the name of the Town of Vaughn prior to the Town's actually receiving a deed to the land?

#### **CONCLUSIONS**

1. See analysis.
2. No.
3. See analysis.
4. No.

## OPINION

### {\*60} ANALYSIS

Section 11-6-6, N.M.S.A., 1953 Compilation (Interim Supp.), of the Bateman Act provides that it is unlawful for a municipality to become indebted or contract any debt of any nature during any current year which is not and cannot be paid out of the money actually collected and belonging to that current year. In 1968 our legislature enacted Section 11-6-6.1, N.M.S.A., 1953 Compilation which provides certain exemptions from the Bateman Act, as follows:

"Insurance contracts not exceeding five [5] years, lease purchase agreements and lease agreements entered into by a local public body set out in section 11-6-6 New Mexico Statutes Annotated, 1953 Compilation, are exempt from the provisions of section 11-6-6 New Mexico Statutes Annotated, 1953 Compilation, and such contracts, lease purchase {\*61} agreements and lease agreements are declared not to constitute the creation of debt."

Thus it is seen that municipalities may now enter into long term lease agreements and lease purchase agreements without violating the provisions of the Bateman Act.

It is noted that Section 11-6-6.1, supra, provides that lease agreements and lease purchase agreements entered into by municipalities are "declared not to constitute the creation of debt." This language is intended to overcome any constitutional question under Article IX, Sections 10, 11 and 12 of the New Mexico Constitution. In spite of this declaration of the legislature, certain lease purchase agreements may constitute the creation of debt within the above constitutional provisions. See **Transamerica Leasing Corp. v. Bureau of Revenue**, N.M. Ct. of Apps. No. 242, issued February 7, 1969.

From the foregoing we must conclude that there is statutory authority for municipalities to enter into long term lease purchase agreements, however, care should be taken that such agreements are drafted in such a manner so as to not "constitute the creation of debt."

In answer to your second and third questions, we find no statutory authority for a municipality earmarking receipts of the future so that these receipts will go to the payment of the amount due each year under a lease purchase agreement. This does not mean, however, that such agreements are not binding on future councils and mayors of municipalities. This office took the position that such agreements were binding on succeeding administrations in Attorney General Opinion 66-20, issued February 10, 1966. Money must therefore be budgeted each year to meet the obligations incurred under such lease agreements.

Last of all, we have been asked if the property on which the fire station exists and which is under the lease purchase agreement with the Town of Vaughn may be assessed for ad valorem purposes in the name of the Town of Vaughn prior to the Town's actually

receiving a deed to the land. The answer to this questions is clearly no. Title to the property must be in the name of the municipality before it may be removed from the tax rolls.