Opinion 08-01

February 15, 2008

OPINION OF: GARY K. KING Attorney General

BY: Elizabeth A. Glenn, Assistant Attorney General

TO: William C. Sisneros, Chief Executive Officer, New Mexico Finance Authority, 207 Shelby Street, Santa Fe, NM 87501

QUESTION:

Does the Education Technology Equipment Act, NMSA 1978, §§ 6-15A-1 to -16 (1997, as amended through 2001) ("ETE Act"), properly define a "lease-purchase arrangement" that a school district can enter into without voter approval under Article IX, Section 11(C) of the New Mexico Constitution?

CONCLUSION:

The ETE Act's definition of "lease-purchase arrangement" is invalid to the extent it includes debt incurred for the acquisition of educational technology equipment that is not a lease-purchase arrangement contemplated under Article IX, Section 11(C).

ANALYSIS:

Article IX, Section 11(A) of the state constitution generally restricts the purposes for which a school district may borrow money and requires the prior approval of the district's voters on "the proposition to create the debt." Subsection (C) provides an exception from those restrictions:

> A school district may create a debt by entering into a lease-purchase arrangement to acquire education technology equipment without submitting the proposition to a vote of the qualified electors of the district....[1]

The ETE Act is intended to implement Article IX, Section 11(C). See NMSA 1978, § 6-15A-2 (1997). As used in the Act, the term "lease-purchase arrangement" means:

> a financing arrangement constituting debt of a school district pursuant to which periodic lease payments composed of principal and interest components are to be paid to the holder of the lease-purchase arrangement and pursuant to which the owner of the education technology equipment may retain title to or a security interest in the equipment and may agree to release the security interest or transfer title to the equipment to the school district for nominal consideration after payment of the final periodic lease payment. *"Lease-purchase arrangement" also means any debt of the school district incurred for the purpose of acquiring*

> *education technology equipment pursuant to the Education Technology [Equipment] Act whether designated as a lease, bond, note, warrant, debenture, obligation or other instrument evidencing a debt of the school district.*

NMSA 1978, § 6-15A-3(C) (emphasis added).

The authority granted to a school district under the ETE Act to incur "any debt" for the purpose of acquiring educational technology equipment is constitutionally valid only if it is consistent with the intent of the drafters of Article IX, Section 11(C). To determine that intent, the same rules that apply when interpreting statutes are used. *See State ex rel. Richardson v. Fifth Judicial Nominating Comm'n*, 2007-NMSC-023, ¶ 17, 160 P.3d 566, 571. Under those rules, no construction is necessary "[w]here the constitutional clause is clear and unambiguous on its face…." *State v. Lynch*, 2003-NMSC-020, ¶ 15, 74 P.3d 73, 77. Effect must be given, "when possible, … to the clear and unambiguous language of the constitutional provision…." *Starko, Inc. v. Cimarron Health Plan, Inc.*, 2005-NMCA-040, ¶ 12, 110 P.3d 526, 529.

Article IX, Section 11(C) excepts from the requirement for voter approval "a lease-purchase arrangement to acquire education technology equipment." The exception clearly and unambiguously applies only to debt in the form of "a lease-purchase arrangement." On its face, the provision does not except other forms of debt incurred by a school district to acquire education technology equipment. *Cf. Board of Comm'rs of Guadalupe County v. State*, 43 N.M. 409, 94 P.2d 515, 520 (N.M. 1939) (constitutional limitation on county's power to borrow money for the purpose of "erecting" buildings excluded the power to incur debt "to remodel, alter or repair a building already existing").

The constitution does not define "lease-purchase arrangement." Absent any indication that the drafters intended otherwise, it generally is "'presumed that the people know the meaning of the words they use in [a] constitutional provision, and that they use them according to their plain, natural and usual signification and import….'" *Block v. Vigil-Giron*, 2004-NMSC-003, ¶ 5, 84 P.3d 72, 75, *quoting Flaska v. State*, 51 N.M. 13, 22, 177 P.2d 174, 179 (1946). "[N]o part of a constitutional provision should be interpreted so that it is rendered meaningless or superfluous." *Denish v. Johnson*, 1996-NMSC-005, ¶ 37, 910 P.2d 914, 924.

A "lease-purchase arrangement," as commonly understood, is a specific method of financing a purchase of property. According to one dictionary definition, a "lease-purchase agreement" is, in pertinent part:

> A rent-to-own purchase plan under which the buyer takes possession of the goods with the first payment and takes ownership with the final payment; a lease of property (esp. equipment) by which ownership of the property is transferred to the lessee at the end of the lease term.

Black's Law Dictionary (8th ed. 2004). This definition is consistent with the first sentence of the ETE Act's definition of "lease-purchase arrangement" quoted above. *See* NMSA 1978, § 6-15A-3(C). *See also* NMSA 1978, § 22-26A-3(A) (2007) (Public School Lease Purchase Act definition of "lease purchase arrangement").

Additional guidance regarding the meaning of "lease-purchase arrangement" as used in Article IX, Section 11(C) is provided by the New Mexico Supreme Court's seminal decision in *Montaño v. Gabaldon*, 108 N.M. 94, 766 P.2d 1328 (N.M. 1989), which involved a typical lease-purchase agreement. Specifically, the Court reviewed an agreement under which a county made semi-annual lease payments for use of a jail facility to be built by a private contractor and the contractor retained title to the facility until the county exercised its purchase option or acquired ownership after the final payment under the agreement. The Court held that the lease-purchase agreement created a debt subject to the constitutional debt restrictions applicable to counties under Article IX, Section 10, including the need for voter approval. 108 N.M. at 96, 766 P.2d at 1330.[2] Article IX, Section 11(C) likely was adopted because of the *Montaño* decision,[3] which necessitated a constitutional amendment to exclude lease-purchase arrangements from the constitution's debt limitations.[4]

In light of *Montaño* and the usual meaning of "lease-purchase arrangement," we believe that the clear purpose of the constitutional provision is to except from voter approval one form of debt -- lease-purchase arrangements -- incurred by school districts to acquire educational technology equipment. The legislature's attempt in Section 6-15A-3(C) of the ETE Act to equate a lease-purchase arrangement with "any debt" may be supported by valid policy considerations, but those considerations alone do not allow the legislature to ignore the plain language of Article IX, Section 11(C). *See State ex rel. Clark v. Johnson*, 120 N.M. 562, 570, 904 P.2d 11, 19 (N.M. 1995) ("the fact that a given law or procedure is efficient, convenient, and useful in facilitating functions of government, standing alone, will not save it if it is contrary to the Constitution" (quoting *INS v. Chadha*, 462 U.S. 919, 944 (1983))). Accordingly, we conclude that the last sentence of Section 6-15A-3(C) improperly expands the exception for lease-purchase arrangements under Article IX, Section 11(C) beyond what the drafters intended and is invalid.[5]

GARY K. KING
Attorney General

ELIZABETH A. GLENN
Assistant Attorney General

[1] In addition to the constitutional restrictions on school district debt imposed under subsection (A) of Article IX, Section 11, subsection (B) restricts the total amount of debt a school district may incur. Lease-purchase arrangements for acquiring educational technology equipment that are excepted from the limitations of subsection (A) remain subject to the limitation in subsection (B). *See* N.M. Const. art. IX, § 11(C).

[2] The *Montaño* decision represents the minority view among state courts addressing whether lease-purchase agreements are subject to constitutional debt restrictions. *See In re Anzai*, 936 P.2d 637, 641 (Haw. 1997); *Dieck v. Unified Sch. Dist.*, 477 N.W.2d 613, 619 & n. 8 (Wis. 1991).

[3] Although *Montaño* specifically addressed only lease-purchase arrangements to acquire real property, it is generally understood to apply as well to lease-purchase arrangements to acquire personal property. *See* Memorandum from Attorney General's Office to All Municipalities, Counties and State Agencies (Apr. 11, 1989) (explaining the implications of *Montaño*, including its application to equipment lease-purchases).

[4] Article IX, Section 11(C) was adopted in 1996. In 2005, Section 11 was further amended by the adoption of subsection (D), which provides that certain lease-purchase agreements entered into by school districts for the acquisition of real property are not debts for purposes of Section 11. The Public School Lease Purchase Act, NMSA 1978, §§ 22-26A-1 to -20 (2007), implements Article IX, Section 11(D).

[5] Our conclusion is limited to the last sentence of the definition of "lease-purchase arrangement" in Section 6-15A-3(C). It does not apply to the first sentence of that definition, which, as discussed in the text, appears to be consistent with the usual understanding of the term.