

Opinion No. 19-2158

January 17, 1919

BY: HARRY S. BOWMAN, Assistant Attorney General

TO: Mr. Charles Springer, President, State Highway Commission, Santa Fe, New Mexico.

Highway Bonds in Excess of \$ 200,000.00 Cannot Be Issued Without Vote by People of State.

OPINION

This office is in receipt of your communication of the 14th instant, making inquiry regarding the legality of a proposed law providing for the issuance of bonds or certificates to be issued by the state and to be sold and the proceeds to be used for highway purposes, and the proceeds derived from the motor vehicle law diverted to a fund to be used in payment of the interest upon and principal of the certificates of indebtedness.

Section 8 of Article IX of the Constitution provides that

"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;" etc.

I would assume from your letter that the proposed legislation contemplates the creation of a statute authorizing a state indebtedness. I am of the opinion that such an act would be in conflict with the section of the constitution above quoted. This section appears to be aimed at any indebtedness created by the state, and I can scarcely conceive of any situation which will arise wherein such an indebtedness would not be construed to be such a debt as is prohibited by this section.

Section 10 of Article IX of the Constitution contains a provision against the borrowing of money by counties except upon a submission of the proposed indebtedness to the qualified voters thereof. In construing this section, the supreme court, in the case of *Borrowdale vs. Board of County Commissioners of Socorro County*, 23 N.M. 1, 163 Pac. 721, held that the act of the board of county commissioners in borrowing money in anticipation of the levy of a tax for the improvement and repair of a state highway within a special taxing district created by the legislature was not in violation of the last above

mentioned section of the constitution, for the reason that the prohibition was against the borrowing of money by a county and not by a taxing district.

This decision may be helpful to you in drawing such prospective legislation as you may desire in order to accomplish the purposes set out in your letter. By creating two or more tax districts within the state and providing that the funds derived from the motor vehicle tax law should be diverted to the said districts and used by them in payment of money borrowed for highway purposes it would appear as if the difficulty could be obviated. By this method your proposed law would not conflict with either sections 8 or 9 of Article IX of the Constitution, and would have the sanction of the supreme court decision.

The only other method in my opinion which could be legally adopted to raise the fund would be by the enactment of a law providing for a bond issue, the same to be submitted to a vote of the electorate at the next regular election.

Aside from the questions raised by your letter, it would appear to the writer as if the latter mentioned method would be the most practicable, as there is no doubt but that an issue of bonds authorized by a vote of the people would bring a larger sum upon their issuance.

Trusting that the foregoing answers your inquiries, I am,