

Opinion No. 26-3900

July 7, 1926

BY: ROBERT C. DOW, Assistant Attorney General

TO: Bureau of Public Health, Santa Fe, New Mexico.

This Office is in receipt of your letter addressed to us by Honorable Paul S. Fox, Chief of Division Sanitary Engineering and Sanitation, wherein you request an opinion as to the validity of certain bonds issued by the town of Las Cruces for the purpose of securing sewer extension and disposal plant for said town.

The following is a copy of the election proclamation:

"Shall the Board of Trustees of the Town of Las Cruces, New Mexico, be authorized to incur an indebtedness for and on behalf of said town and upon the credit thereof by issuing the negotiable coupon bonds of said Town in the amount of Ninety Nine Thousand Dollars (\$ 99,000.00) for the purpose of securing sewer extension and disposal plant in and for said Town of Las Cruces?"

It is a general rule of law that two or more propositions if separate and distinct cannot be combined into one and submitted as a single question. This rule is upheld in the case of *Stern v. Fargo*, 26 L. R. A. New Series, page 666, and the same ruling was adopted in New Mexico in the case of *Lanigan v. Gallup*, 17 N.M. 642. In the New Mexico case above cited the town of Gallup held an election and voted upon a bond issue for the purpose of securing a system of water works and a sewer system, and the court held that a voter might desire a water system and that it might be absolutely necessary to provide therefor, while on the other hand a sewer system might reasonably be dispensed with and the voter not desire it, and that each of said propositions should have been stated separately, voting a separate amount for each proposition.

However, in the present case the question arises as to whether or not a disposal plant and sewer system are naturally related and connected in such a way that the vote upon the same would in effect be a vote upon a single question. The disposal plant is to be used in connection with the sewer system and one can hardly be operated without the other, at least the disposal plant is essential in perfecting the sewer system, and in as much as the bond issue is in the amount of \$ 99,000.00, I am of the opinion that the local authorities may use their discretion in determining just how much of said amount they should expend upon the disposal plant or upon the sewer system; for the above reasons I do not believe that this bond issue would be invalidated by reason of the New Mexico decision heretofore referred to.