

Opinion No. [30-65]

February 7, 1930

TO: Office of the Attorney General of New Mexico

PUBLIC HIGHWAYS -- Debentures for obligation of state special levies held constitutional. Chap. 193, Laws 1929.

OPINION

Reference is made to yours of the 6th inst. in which you request an opinion as to the constitutionality of chapter 193 of the Session Laws of 1929 and ask further whether the collection of taxes provided for by that act may be anticipated by the issuance and sale of debentures.

Although you do not say so in your letter, it is now our understanding that question was raised as to this and similar acts of the same legislature by Mr. Asplund, Director of the Taxpayers' Association and on the ground that certain provisions of such acts were in conflict with section 24, Article IV of the Constitution of the State of New Mexico, prohibiting local and special laws and on the further ground that the debentures provided for are in conflict with section 10 of Article IX of the Constitution, relative to the debt-contracting power of counties.

Section 24 of Article IV of the Constitution of the State of New Mexico is as follows:

"The Legislature shall not pass local or special laws in any of the following cases laying out, opening, altering, or working roads or highways except as to state roads extending into more than one county . . ."

We note that the prohibition as to special legislation for the laying out, opening, altering, or working roads or highways does not apply to "state roads extending into more than one county."

It is to be noted that the constitution does not define "state road" thus probably leaving the legislature free to declare what ways shall be considered state roads. By chapter 38 of the Session Laws of 1917 there was created a State Highway Commission and by section 7 of that act upon the State Highway Engineer, for whom provision is made in an earlier section, was imposed, under the direction of the State Highway Commission, the duty of selecting and designating the highways that should comprise **a system of state roads**. It was further provided that the system of state roads so designated might be changed or added to from time to time by the State Highway Engineer, subject to the approval of the State Highway Commission.

In general and as defined by courts a "state road" is a road running into two or more counties and is distinguished by this from a "county road" which lies wholly within one

county. In addition to this the legislature has designated the road upon which this bridge is to be constructed a state highway. It seems evident that the bridge provided for in chapter 193, Session Laws of 1929, falls within the exception of section 24 of Article IV of the Constitution and there is no conflict therewith in providing means for the construction of such a bridge. That is, it is not prohibited legislation.

Section 10 of Article IX of the State Constitution is as follows:

"Section 10. No county shall borrow money except for the purpose of erecting necessary public buildings or constructing or repairing public roads and bridges, and in such cases only after the proposition to create such debt shall have been submitted to the qualified electors of the county who paid a property tax therein during the preceding year and approved by a majority of those voting thereon. No bonds issued for such purpose shall run for more than fifty years.

This section relates to the borrowing of money by counties and in cases in which borrowing is permitted the proposition to create the debt must first be submitted to the qualified electors of the county and be approved by the majority of those voting. In the act of the legislature under consideration, no provision is made for submitting the question of issuing debentures to a vote of the electors in any county.

I fail to see anything in section 10 above quoted in any way affecting or conflicting with the provisions for the issuing of debentures by the State Highway Commission as provided in the act. The debentures provided for are to be signed by the president of the State Highway Commission, attested by its secretary with the seal of the commission thereto affixed, and shall be countersigned by the State Treasurer. The principal and interest of such debentures shall be payable at the office of the State Treasurer or at some bank to be designated in the debentures and shall be paid out of revenues derived from the collection of special tax levies in the respective counties.

Following the suggestion of the Supreme Court of the State in the case, *State vs. Graham*, 32 N.M., 485, in which the court construed chapter 20, Laws of 1927, wherein debentures anticipating the proceeds of gasoline excise tax were under consideration, we are of the opinion that the debentures provided for in chapter 193, Laws of 1929, constitute a borrowing of money by the State and a contracting of debt by and on behalf of the State. This being the case there is no conflict with section 10 of Article IX of the Constitution which relates to the borrowing of money by counties. Even though the revenues for the payment of these debentures, principal and interest, are to be derived from special tax levies in specified counties, the obligation is that of the State. The borrowing is a borrowing by the State rather than by the county and the special assessments in each instance are justified on the theory of special benefit to the county or district upon which such special levy is made.

From the foregoing you will note that it is the opinion of this office that chapter 193 of the Laws of 1929, is constitutional and further that the collection of taxes provided for in

that chapter may be anticipated by the issuance and sale of debentures as therein provided.