

Opinion No. 33-626

July 12, 1933

BY: E. K. NEUMANN, Attorney General

TO: Hon. Juan N. Vigil, State Comptroller, Santa Fe, New Mexico.

{*67} Your letter of July the 12th, relative to the proposed action of Taos County whereby it is intended to borrow money to complete the Court House and Jail building, has been received.

Authority for a tax levy for this purpose is contained in Section 33-5603 of the 1929 Compilation.

Power to borrow in anticipation of the collection of the levy is set forth in Section 33-5604, which reads as follows:

"That all moneys received from such levies shall be placed to the credit of the fund to be designated "court house building fund" until such times as in the discretion of the county commissioners of such county, there is sufficient money in said fund to provide a suitable court house. Provided, however, that the board of county commissioners of such county is hereby authorized to anticipate the levy for any one year by borrowing money, the amount not to exceed the total proceeds for that year, and in its discretion commence the erection of a suitable court house to be paid for out of the levies from year to year as made, or in anticipation of such levies as herein provided."

The question of advisability of following this procedure should be referred to the District Attorney of that district before any final action is taken, but we may suggest at this time that the foregoing law appears to be in conflict with Section 10 of Article 9 of the State Constitution, which in effect provides that propositions to borrow money shall first be 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.

From the foregoing, we would advise against the proposed procedure.

By: FRANK H. PATTON,

Asst. Attorney General