

Opinion No. 33-656

September 23, 1933

BY: E. K. NEUMANN, Attorney General

TO: Hon. M. A. Otero, Chairman, State Advisory Board (PWA), Santa Fe, New Mexico.

{*78} With reference to your letter of September 6, 1933, relating to the matter of the power of municipalities, state institutions and other public corporations and political subdivisions to borrow money from the Public Works Administration under the Public Works Act.

Those public corporations, municipal corporations and political subdivisions, quasi in character, such as irrigation districts, conservancy districts and the like, in practically all instances have power to issue general obligation bonds without limit, under provisions contained in those laws providing for their creation.

State institutions have practically no powers under existing laws to borrow money for any purpose and especially for building purposes. These institutions are dependent for their existence upon legislative appropriations, income from permanent funds and their own earnings. Their earnings are not from the specific property owned by them, but rather upon fees charged for its use in an indirect way, and, of course, bonds cannot be issued in anticipation of legislative appropriation. Neither can the permanent funds be touched for any purpose nor can these permanent funds be pledged or hypothecated in any manner. Therefore all that remains which might be pledged to repay a debt is the income from permanent funds.

In my opinion, this income can not be pledged without specific authority to so do given by the legislature to such state institution. This has been done in only two instances, under Chapter 47, Laws of 1927, as amended by Chapter 30, Laws of 1929, and under Chapter 40, Laws of 1929.

Under the former law, the State University is authorized to borrow money and issue its bonds therefor, for certain purposes, and to pledge its income from permanent funds for the payment of such moneys borrowed. The latter law provides for similar procedure upon the part of the Agricultural School. The former act contains the following limitations:

"Provided, however, that said board of regents shall not have power to issue bonds hereunder, the aggregate annual requirements for which to meet the interest {*79} and principal, shall exceed the amount of the income from the permanent funds of said university received by the state treasurer for the fiscal year next preceding the date of the issuance of said bonds or any series thereof."

Section 130-924, 1929 Code.

The latter act contains the following limitation:

"Provided, however, that said board of regents shall at no time issue bonds hereunder in excess of the aggregate principal sum of two hundred thousand dollars."

Section 130-1025, 1929 Code. Apparently, no institution has power to borrow money, except the University and the Agricultural College, and these only within the limits fixed by the legislature in the acts quoted.

As to municipalities, counties and school districts, we need look little farther than the constitution for their powers and privileges to borrow money.

Section 10 of Article 9 relates to the debt contracting powers of counties and provides that none can be contracted except after the proposition has been approved by a majority of the people voting thereon.

Section 11 of Article 9, as amended, relates to the debt contracting powers of school districts and the limitation thereof, providing that such school district can become indebted only after approval thereof by a majority of the people voting thereon, and limits the amount of such debt to six per cent on the assessed valuation of the taxable property in such district as shown by the preceding general assessment.

Section 12 of Article 9, provides that municipalities cannot contract indebtedness unless the proposition shall have been approved by a majority of the people voting thereon at a regular city election.

Section 13 of Article 9 limits the indebtedness of counties and municipalities to four per cent on the valuation of the taxable property within such county or municipality, providing however that cities, towns or villages may contract debts in excess of such limitation for the construction or purchase of water or sewer systems for such municipalities.

This disposes of all questions of a general bond issue, at least, as to the method of issuing same and the limitation thereof, leaving only the proposition of income or revenue bonds pledged to repay any borrowing or the right to mortgage property to repay such sums borrowed.

It is clear, as I view it, that under our Constitution and the decisions of our courts no public property can be mortgaged to repay money borrowed. See *Palmer vs. Albuquerque*, 19 N.M. 285 and *Seward vs. Bowers, et al.*, 37 N.M. . It is also apparent, as hereinabove pointed out, that state institutions have no power to issue revenue or income bonds, except the University and Agricultural College within certain limits fixed by law.

Under Chapter 57, Laws of 1933, the Legislature of this state permits municipalities to issue revenue bonds, payable solely out of the net income to be derived from the

operation of any municipally owned **utility**, the proceeds of such bonds to be issued solely for the purpose of making necessary **improvements, extensions, repairs and betterments** of said utility. This act in *Seward vs. Bowers*, supra, was sustained as valid by our Supreme Court on June 30, 1933.

It can immediately be seen, however, that said act is of no benefit to a municipality having no municipally owned utility, for it does not permit bonds of the class permitted to be issued for the **purchase, building or acquiring** of a utility by such municipality. The act is fine as far as it goes, and does not, under said court decision, fall foul of the Constitution as creating a general obligation in excess of constitutional limitations:

From the foregoing, we must conclude:

1. That state institutions, except the University and Agricultural College, within certain limits, cannot borrow money from the PWA, under the conditions imposed by the Public Works Act, without some legislation permitting the pledging of some income for repayment of such proposed borrowing.
2. That counties, municipalities and school districts cannot {**80*} be helped by legislation, because of constitutional requirements, restrictions and limitations, except in so far as Chapter 57, Laws of 1933 can be amended to permit the issuance of revenue bonds, as therein contemplated, for the purpose of acquiring, purchasing or building a municipally owned utility.