

Opinion No. 35-1081

July 1, 1935

BY: FRANK H. PATTON, Attorney General

TO: Mr. N. G. Vansickle, President, Las Vegas Municipal Ownership League, Las Vegas, New Mexico.

{*72} We have your letter of June 26, 1935. There are a number of important questions upon which you wish our opinion. I have given the matter considerable thought and have arrived at the following conclusions:

1. Sections 90-2201 to 90-2208 of the 1929 Compilation have not been repealed. I find no statute expressly repealing these sections and in my opinion the statutes mentioned by you do not do so by implication.

2. Chapter 57, Laws of 1933 as amended by Chapter 4, Laws of 1934, authorizes the issuance of revenue bonds by a vote of two-thirds of the members of the governing board of the municipality.

3. Chapter 88, Laws of 1931, authorizes cities and towns to "construct or to contract for the construction of * * * electric light works." There is a serious question as to whether or not this language authorizes a city to acquire an electric light plant which is already in existence. However, there is some authority to the effect that the power to construct includes the power to buy or provide. *Seymour vs. Tacoma*, 32 Pac. 1077, 6 Wash. 138. I am inclined to favor this interpretation of our statute. Section {*73} 2 of Chapter 4, Laws of 1934, seems to indicate that the legislature also construes the statute to include the power to acquire an existing plant.

4. In any event I think it would be necessary for the question of constructing or acquiring an electric light plant to be submitted to a vote of the people of a municipality. This is plainly stated in Chapter 88, Laws of 1931.

5. I do not think that a municipality has the power to acquire an existing electric light plant by condemnation proceedings. I find no statute authorizing a municipality to exercise the right of eminent domain in such cases and it is a general rule of law that the right to exercise the power of eminent domain is strictly limited to the uses and purposes specified in the statute conferring the power, or clearly embraced within the legitimate scope thereof. *20 C.J. 622, Albuquerque Land etc. Company vs. Gutierrez*, 10 N.M. 177, 61 Pac. 357.

As heretofore pointed out, it may be possible under our law for a municipality to acquire such a plant through a voluntary contract of purchase but there is some doubt about this.

Trusting that I have answered all of the questions submitted in a clear and satisfactory manner, I am,

By: QUINCY D. ADAMS,

Asst. Atty. General