

**Opinion No. 39-3037**

February 24, 1939

**BY:** FILO M. SEDILLO, Attorney General

**TO:** Mr. S. E. Paxton, Chairman, Committee on Auditorium, Springer, New Mexico.

{\*20} Your letter of February 20 requesting information on plans and method of financing the construction of a municipal auditorium has been received.

Chapter 90, Article 4, Section 402, Sub-Section 5 of the New Mexico Statutes Annotated, 1929 Compilation, as to the powers of municipal corporations reads:

"To erect all needful buildings for the use of the city or town.'

In this same Chapter 90, Section 2101, is an amendment from the Session Laws of 1927, Chapter 29, Section 1, the pertinent part of which reads as follows:

"Cities of five thousand population may erect and improve public auditorium. That any incorporated city, town or village in this state having a population of at least five thousand shall have power to purchase, improve or erect public auditoriums or buildings of a similar nature for general civic purposes."

In the case of Varney vs. the City of Albuquerque, 40 N.M. 90, in discussing the constitutionality of this section the court said:

"Our conclusion in that section 90-2101, N.M. Ann. Stats., Comp. 1929, is consistent with section 12 of article 9 of the State Constitution, is valid and supersedes all previous statutes to the extent of its subject-matter here involved, to wit, the power to borrow money to build public auditoriums,"

From the reading of the statutes above quoted and of the opinion of the Supreme Court in the cases above quoted, it is my opinion that the statute is mandatory and that no municipality of less than five thousand could issue bonds and construct a municipal auditorium.

It is my further opinion that Springer being a town of less than five thousand population ,the Board of Trustees of the village of Springer under the laws of the State of New Mexico would not have the power to call a bond election or to erect a municipal auditorium.

By: GEORGE LOUGEE,

Asst. Atty. Gen.