

Opinion No. 41-3911

October 3, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. H. Vearle Payne Assistant Special Tax Attorney State Tax Commission Santa Fe, New Mexico

{*105} You have requested an opinion by this office as to whether or not the Town of Alamogordo may issue \$ 40,000.00 worth of non-option refunding bonds maturing on December 15, 1941, which bonds are to be refunded by non-option refunding bonds in the same amount dated December 15, 1941, payments of \$ 10,000.00 a year to be made commencing December 15, 1946, and the final payment to be made on December 15, 1949. The bonds to be first refunded are option bonds, the option now being exercisable, but which bonds will not finally mature until May 1946.

Section 90-1102, New Mexico statutes, Annotated, 1929 Compilation, provides in part as follows:

"Provided, that when bonds are issued to refund existing and outstanding bonds which may become due and payable at the option of a governing board as set out in the bonds to be refunded, the date of maturity of such refunding bonds shall not extend beyond the date of final maturity of such bonds to be so refunded."

Section 90-1101, New Mexico Statutes Annotated, 1929 Compilation, provides that a city or town may issue refunding bonds for the purpose of refunding **any** indebtedness "which has or may hereafter become due". In view of the foregoing, it is my opinion that the Town of Alamogordo may refund \$ 40,000.00 worth of its option bonds, the option being now exercisable, so long as the maturity date of those first refunding bonds is prior to the maturity date of the bonds to be refunded. Since the first refunding bonds are to mature on December 15, 1941, and the maturity date on the bonds to be refunded is May 1946, these first refunding bonds may certainly be issued by the town.

In Attorney General's Opinion No. 962, dated March 18, 1935, this office ruled, in construing the same statutes now before us, that county bonds could be refunded on or after the maturity date of those bonds; this position was taken in view of the provision in Section 90-1101 of the 1929 Compilation which provides that bonds may be issued to pay off any indebtedness which **has** become due and payable.

Since the first refunding bonds will be an existing and outstanding indebtedness on or after December 15, 1941, and will have matured on that date, it is my opinion, in view of the foregoing opinion, that the Town of Alamogordo may refund the first refunding bonds on or after December 15, 1941.

By GEO. H. HUNKER, Jr.

Asst. Atty. General