

Opinion No. 46-4855

February 13, 1946

BY: C. C. McCULLOH, Attorney General

TO: Mr. C. R. Sebastian State Comptroller Santa Fe, New Mexico

{*188} In your letter dated February 11, 1946, you refer to Section 14-3335 of the 1941 Compilation which authorizes municipalities having a certain population to issue general obligation bonds for street improvements in an amount not to exceed \$ 100,000.00. You inquire whether this authority to issue a limited amount of bonds conflicts with the Constitution and whether the Legislature intended the bonds to be outside the Constitutional limitation.

Article 9, Section 13 of the New Mexico Constitution provides as follows:

"No county, city, town or village shall ever become indebted to an amount in the aggregate, including existing indebtedness, exceeding four per centum on the value of the taxable property within such county, city, town or village, as shown by the last preceding assessment for state or county taxes; and all bonds or obligations issued in excess of such amount shall be void; provided, that any city, town or village may contract debts in excess of such limitation for the construction or purchase of a system for supplying water, or of a sewer system, for such city, town or village."

The Legislature could not pass a valid act authorizing an indebtedness by a municipality in excess of 4% for any purpose other than that of providing a water or sewer system. The Constitution is not self-executing insofar as authority for bond issues is concerned. The authority must be found in the statutes, but such authority can only be in conformity with the constitutional limitation. For that reason Section 14-3335 can only be interpreted as authorizing municipalities of a certain class to issue a maximum of \$ 100,000.00 in general obligation bonds for street improvements, provided such issuance is within the constitutional limitation, to be found in Section 13 above quoted.