

Opinion No. 46-4847

January 30, 1946

BY: C. C. McCULLOH, Attorney General

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

{*181} We are in receipt of your letter of January 29, 1946, in which you ask whether it would be possible, in an {*182} election in which a municipality proposes to issue street improvement bonds to its full borrowing capacity, to also vote sewer bonds in excess of the 4% limitation absorbed by the street improvement bonds.

This office, in Opinion No. 4821 A, has held that previously issued sewer bonds must be included in calculating whether a municipality has reached its 4% limitation.

Article 9, Section 13, provides, in part:

"No city, town or village shall **ever become indebted** to an amount in the aggregate, including existing indebtedness, exceeding 4% of the value of the taxable property within such county, city, town or village * * * 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 sewer system for such city, town or village."

Under this section the prohibition is against becoming indebted. Thus, the holding of an election, leading up to the issuance of bonds is not prohibited.

It is, therefore, my opinion that a municipality may, at the same election, vote on the issuance of street bonds, which would bring the municipality's indebtedness up to the 4% limitation, and also vote on sewer bonds, which would exceed the limitation. However, to make both bond issues valid and enforceable, it would be necessary for the municipality to first enact the ordinance contracting the debt for the street improvement bonds, and also issue such bonds before enacting the ordinance and issuing the sewer bonds. If this procedure were followed, the street improvement bonds would be valid because, at the time they became debts, the 4% limitation would not be exceeded. The sewer bonds would be valid, since Article 9, Section 13, specifically permits the contracting of a debt for such purposes in excess of the 4% limitation.

By ROBERT W. WARD,

Asst. Atty. General