

# CHAPTER 5

## MUNICIPAL AND COUNTY SERVICES

### ARTICLE 1

### AMBULANCE SERVICE

#### 5-1-1. Political subdivisions; ambulance service.

A municipality or county may:

A. provide ambulance service to transport sick or injured persons to a place of treatment in the absence of an established ambulance service only as authorized by the state corporation commission;

B. contract with other political subdivisions or with private ambulance services for the operation of its ambulance service;

C. lease ambulances and other equipment necessary to the operation of its ambulance service;

D. in the course of its operation of an ambulance service, proceed to the scene of a disaster beyond its subdivision boundaries when requested, providing no local established ambulance service is available or if one exists, such local ambulance service deems their capacity inadequate or insufficient for emergency transportation of the disaster victims;

E. transport sick or injured persons from the subdivision boundaries to any place of treatment; and

F. no personal action shall be maintained in any court of this state against any member or officer of a political subdivision or in execution of its orders under this section. In all such cases, political subdivisions shall be responsible. Any member or officer of the political subdivision may plead the provisions of this section in bar of such action whether it is now pending or hereafter commenced.

**History:** 1953 Comp., § 12-15-1, enacted by Laws 1967, ch. 167, § 1; recompiled as 1953 Comp., § 12-27-1, by Laws 1972, ch. 51, § 9; Laws 1974, ch. 82, § 7.

**Cross-references.** - For Ambulance Standards Act, see 65-6-1 to 65-6-6 NMSA 1978.

For definition of duty, rights and laws affecting emergency vehicles, see 66-1-4 to 66-1-4.20, 66-7-6, 66-7-332 NMSA 1978.

As to duty of other drivers upon approach of emergency vehicle, see 66-7-332 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Liability for personal injury or property damage from operation of ambulance, 84 A.L.R.2d 121.

## **ARTICLE 2**

### **TELEVISION TRANSLATOR STATIONS**

#### **5-2-1. Television translator stations; construction by political subdivisions.**

Any county or municipality in the state is authorized to appropriate annually from its general fund a reasonable sum for the acquisition, construction, improvement or maintenance of translator stations for the purpose of receiving and transmitting television broadcasting signals.

**History:** 1953 Comp., § 11-6-41, enacted by Laws 1975, ch. 311, § 1.

#### **5-2-2. Appropriation prohibited.**

No county or municipality shall appropriate from its general fund to acquire, improve or maintain any translator station originally or hereafter constructed or presently or hereafter licensed and maintained by a commercial television station.

**History:** 1953 Comp., § 11-6-42, enacted by Laws 1975, ch. 311, § 2.

## **ARTICLE 3**

### **AUDITORIUMS**

#### **5-3-1. Definitions.**

The following terms wherever used or referred to in this act [5-3-1 to 5-3-8 NMSA 1978] shall have the following meanings unless a different meaning clearly appears from the context.

A. The term "municipality" shall mean any incorporated county, city, town or village in the state of New Mexico, having a population of at least five thousand.

B. The term "auditorium" shall mean a public auditorium or building of a similar nature used for general civic purposes.

C. The term "bonds" shall mean bonds, notes, temporary bonds, interim certificates, negotiable instruments or any other evidences of indebtedness of any nature whatsoever.

**History:** Laws 1935, ch. 51, art. 1, § 1; 1941 Comp., § 6-301; 1953 Comp., § 6-3-1.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 543.

Exemption from taxation of municipally owned or operated stadium, auditorium, and similar property, 16 A.L.R.2d 1376.

Maintenance of auditorium, community recreational center, building, or the like, by municipal corporation as governmental or proprietary function for purposes of tort liability, 47 A.L.R.2d 544.

20 C.J.S. Counties §§ 145 to 149; 63 C.J.S. Municipal Corporations §§ 950 to 972.

### **5-3-2. [Authority of municipality to acquire auditorium; necessity of elections waived; bonds not general obligations.]**

That any municipality shall have power to purchase, improve, erect and maintain public auditoriums, or to authorize the improvement or erection of same by agreement with the officers of the county in which the municipality is located, and shall have power to issue and sell bonds for the purposes herein mentioned. Bonds issued hereunder may be sold by such municipality for cash at one time or from time to time at public or private sale at not less than par. Notwithstanding the provisions of any general, special or local law it shall not be necessary for any governing body of such municipality to submit to the people of such municipality in which said auditorium is proposed to be erected the question as to whether such auditorium shall be erected, nor shall it be necessary to submit to the people of such municipality in which said auditorium is to be erected the issuance of any bonds authorized hereunder to pay for or finance the erection of any such auditorium. Provided, however, that any bonds issued hereunder shall not constitute general obligations of any such municipality, but the payment thereof shall be secured only by a lien against the auditorium and real estate upon which the same is erected and a pledge of the net revenues of said auditorium as hereinafter provided; and provided further that any bonds issued hereunder shall be payable solely and only out of the income derived from the operation of such auditorium and by the property upon which the lien aforesaid is provided.

**History:** Laws 1935, ch. 51, art. 1, § 2; 1941 Comp., § 6-302; 1953 Comp., § 6-3-2.

**Section contemplates special fund** arising solely from sources separate and apart from general taxation and that the site upon which the auditorium would rest should not be acquired by purchase or otherwise with funds arising in whole or in part from general taxation. *Wiggs v. City of Albuquerque*, 56 N.M. 214, 242 P.2d 865 (1952).

**Statutory lien to be read into bonds.** - In view of provision that bonds issued for municipal auditoriums not be general obligation bonds, but that payment be secured only by lien against the auditorium premises, as well as a pledge of the net revenues to arise from operating the auditorium, the statutory lien thus created is to be read into the bonds. *Wiggs v. City of Albuquerque*, 56 N.M. 214, 242 P.2d 865 (1952).

**Suit to enjoin plan held timely.** - Since this section itself declares that bonds issued shall be secured by a lien upon the site and the property built and pledges net revenues to arise from its operation to secure the bond issues, a suit to enjoin city from enacting an ordinance in pursuance of a plan held not premature. *Wiggs v. City of Albuquerque*, 56 N.M. 214, 242 P.2d 865 (1952).

**Population of municipality affects right to construct auditorium.** See 1953-54 Op. Att'y Gen. No. 5778.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 543; 64 Am. Jur. 2d Public Securities and Obligations § 105.

Auditorium or stadium as public purpose for which public funds may be expended or taxing power exercised, 173 A.L.R. 415.

20 C.J.S. Counties §§ 143, 144, 218 to 226; 64 C.J.S. Municipal Corporations § 1957.

### **5-3-3. [Auditorium revenue bonds; mortgage or lien to secure payment.]**

Whenever it shall be declared necessary by the governing body, by ordinance duly adopted, as hereinafter provided, municipalities are hereby authorized to make and issue revenue bonds, payable solely out of the net income to be derived from the operation of an auditorium, and to pledge irrevocably, such income to the payment thereof, and to execute a mortgage or other lien upon the auditorium premises to secure the payment of said bonds.

**History:** Laws 1935, ch. 51, art. 1, § 3; 1941 Comp., § 6-303; 1953 Comp., § 6-3-3.

**Section contemplates special fund** arising solely from sources separate and apart from general taxation and that the site upon which the auditorium would rest should not be acquired by purchase or otherwise with funds arising in whole or in part from general taxation. *Wiggs v. City of Albuquerque*, 56 N.M. 214, 242 P.2d 865 (1952).

**"Debt" within constitutional prohibition created.** - The mortgage lien on municipal auditoriums declared by this section creates a "debt" within the prohibition found in N.M. Const., art. IX, § 12, except as the creation of same may have received an approving vote by referendum. *Wiggs v. City of Albuquerque*, 56 N.M. 214, 242 P.2d 865 (1952).

#### **5-3-4. [Terms and conditions of bonds; sale.]**

Revenue bonds issued under the provisions of this act [5-3-1 to 5-3-8 NMSA 1978] shall bear interest at not to exceed four and one-half (4 1/2) percent per annum, payable annually or semiannually, shall be payable at the option of such municipality at the end of ten years from the date thereof; and due by their terms in not more than twenty years from the date thereof; as determined by the municipality; shall be serial in form and maturity and numbered from one upward, consecutively, and shall be sold for cash, at not less than par, and at either public or private sale.

**History:** Laws 1935, ch. 51, art. 1, § 4; 1941 Comp., § 6-304; 1953 Comp., § 6-3-4.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 20 C.J.S. Counties §§ 222 to 225; 64 C.J.S. Municipal Corporations § 1935.

#### **5-3-5. [Issuance of bonds; execution.]**

Governing bodies of municipalities issuing bonds under the provisions of this act [5-3-1 to 5-3-8 NMSA 1978], may authorize the issuance thereof by ordinance adopted by the affirmative vote of two-thirds of all the members of said governing bodies, at either regular or special meeting called for that purpose, wherein the necessity thereof shall be declared and, when issued, shall be signed by the mayor or other executive head and attested by the clerk of said governing body, with the seal of said municipality affixed thereto.

**History:** Laws 1935, ch. 51, art. 1, § 5; 1941 Comp., § 6-305; 1953 Comp., § 6-3-5.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 C.J.S. Municipal Corporations §§ 1908, 1948.

#### **5-3-6. [Lease of auditorium by municipality.]**

That any municipality shall have power to lease any auditorium from the United States of America, the president of the United States of America, the federal emergency administration, the public works administration or such other federal or state agency or agencies as heretofore or may hereafter be designated or created by the United States or the state of New Mexico, and to make contract or contracts of lease with such agencies for the use, occupation and maintenance of such auditorium at such rental and upon such terms and conditions as shall be agreed upon by the parties.

**History:** Laws 1935, ch. 51, art. 1, § 6; 1941 Comp., § 6-306; 1953 Comp., § 6-3-6.

**Constitutionality of lending to other governmental agency.** - New Mexico Const., art. IX, § 14, has no application where the lending of credit is under legislative sanction by one subordinate governmental agency to another governmental agency. *Wiggs v. City of Albuquerque*, 56 N.M. 214, 242 P.2d 865 (1952).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 20 C.J.S. Counties § 148; 63 C.J.S. Municipal Corporations § 1041.

### **5-3-7. [Ratification of issuance and sale of bonds by electorate.]**

That where any of the federal or state agencies specified in Paragraph 3 of this act purchase bonds from any municipality as defined herein, for the purpose of enabling such municipality to purchase, improve, erect and maintain public auditoriums, whether the said bonds be issued hereunder or under the provisions of any other act, and such federal or state agency requires that the issuance and sale of such bonds shall be thereafter submitted to the people for ratification and approval, the municipality shall have and it hereby is given the power to pledge to such federal or state agency the good faith of the municipality that said municipality will submit to the vote of the people therein at the time and in the manner required by the constitution of New Mexico the ratification and approval of the issuance and sale of such bonds by such municipality.

**History:** Laws 1935, ch. 51, art. 1, § 7; 1941 Comp., § 6-307; 1953 Comp., § 6-3-7.

**Compiler's note.** - "Paragraph 3 of this act" evidently refers to Section 6 of the act, compiled as 5-3-6 NMSA 1978.

**Intention to purchase bonds necessary to charge discrimination.** - A person who did not suggest that he might become a purchaser of any bond under proposed bond issue could not complain that statute authorizing issuance and sale of revenue bonds to raise funds for building a municipal auditorium was discriminatory. *Wiggs v. City of Albuquerque*, 56 N.M. 214, 242 P.2d 865 (1952).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 20 C.J.S. Counties § 221; 64 C.J.S. Municipal Corporations § 1920.

### **5-3-8. [Public Works Act not affected.]**

Nothing herein contained shall be construed to affect in any way any of the provisions of Chapter 6 of the Laws of 1934.

**History:** Laws 1935, ch. 51, art. 1, § 8; 1941 Comp., § 6-308; 1953 Comp., § 6-3-8.

**Compiler's note.** - Laws 1934, ch. 6, referred to in this section, is not compiled in NMSA 1978 since it was enacted to implement the National Industrial Recovery Act which was declared unconstitutional in *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 55 S. Ct. 837, 79 L. Ed. 1570, 97 A.L.R. 947 (1935).

**5-3-9. Cities of five thousand or more; authority; joint action with county; bond issue; election; form of bonds; installment payments; tax levy; estimate of cost.**

A. Any incorporated city, town or village 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, or to authorize the improvement or erection of public auditoriums or buildings of a similar nature by agreement with the officers of the county in which the municipality is located, and shall have power to issue and sell bonds for the purposes mentioned. Provided, that the total indebtedness of any such city, town or village shall not exceed the percentage now provided by law of the value of the taxable property therein as shown by the last preceding assessment for state or county taxes. If a majority of all the legal votes cast at a legal election shall be in favor of the issuance of the bonds, it shall be the duty of the authorities of the city, town or village to have the bonds issued as soon as practicable.

B. Any bonds, lawfully issued, may be issued in serial form or in form of term bonds, and consistent with convenient denominations, the principal of the serial bonds shall be payable serially either in substantial equal annual installments, or in such annual installments as to require a substantially equal levy for principal and interest each year until all the bonds of the issue have been paid in full. Provided, that the first installment shall be payable in not more than five years and the final installment shall be payable in not more than thirty years after the date of the bonds. The bonds shall bear interest at the rate of not to exceed six percent a year, payable either annually or semiannually. The interest payments may be evidenced by coupons in the usual form, payable upon presentation in such place as may be provided in the bonds.

C. After the bonds are duly issued and sold, a special tax shall be levied upon all property within the city, town or village each year until the bonds and interest shall be paid in full. The special tax shall be levied and collected in the same manner as other taxes are levied and collected, sufficient to pay interest thereon and that portion of principal or sinking fund which may be necessary for the payment due upon the bonds during the succeeding year as provided in this section.

D. No election shall be called to vote upon any bond issue until the city, town or village engineer or some other competent engineer shall have filed, under oath, with the clerk or other proper officer of the city, town or village, a carefully prepared estimate of the approximate cost of the proposed improvement to be made, and no bonds shall be issued in excess of the estimate. It shall be the duty of the proper authorities of the city, town or village to provide by ordinance for the levy, collection and payment of a sufficient amount of money each year to meet the interest, sinking fund and principal requirements of the bonds and the ordinance shall not be repealed until the bonds and interest are paid in full.

**History:** Laws 1927, ch. 29, § 1; C.S. 1929, § 90-2101; 1941 Comp., § 6-309; 1953 Comp., § 6-3-9; Laws 1959, ch. 196, § 1.

- This section, which prior to the 1959 amendment authorized cities to issue bonds for construction of public auditorium on two-thirds vote of legal voters, did not run counter to provision of N.M. Const., art. IX, § 12, that no city, town or village shall contract any

debt unless approved by majority vote of qualified electors, and precluded issuance of such bonds under 14-21-4, 1953 Comp. (now repealed) authorizing issuance of bonds for construction of public or needful buildings on majority vote. *Varney v. City of Albuquerque*, 40 N.M. 90, 55 P.2d 40 (1936).

**Purpose of section.** - This section was enacted for the primary purpose of dealing with a particular subject, civic auditoriums for cities, and superseded a general statute referring to public buildings, or needful buildings. *Varney v. City of Albuquerque*, 40 N.M. 90, 55 P.2d 40 (1936).

**Effect on municipalities under 5000 population.** - Considering the fifth subsection of 14-21-3, 1953 Comp. (repealed), in the light of this section, and in view of the decision in *Varney v. City of Albuquerque*, 40 N.M. 90, 55 P.2d 40, 106 A.L.R. 222 (1936), no municipality of less than 5,000 could issue bonds and construct a municipal auditorium. 1939-40 Op. Att'y Gen. 20.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 C.J.S. Municipal Corporations § 1908.

### **5-3-10. [Use of auditorium.]**

Such public auditorium or building shall be used only for public purposes and shall not be leased, occupied or used for commercial purposes.

**History:** Laws 1927, ch. 29, § 2; C.S. 1929, § 90-2102; 1941 Comp., § 6-310; 1953 Comp., § 6-3-10.

### **5-3-11. Counties authorized to issue bonds and erect public auditoriums.**

The board of county commissioners of the several counties in this state having a population of twenty-five thousand are hereby authorized and empowered to issue the bonds of such counties for the purpose of acquiring suitable sites for public auditorium within their counties, and for the building of such auditoriums. Such public auditoriums are declared to be necessary public buildings.

**History:** 1941 Comp., § 6-311, enacted by Laws 1941, ch. 101, § 1; 1953 Comp., § 6-3-11; Laws 1955, ch. 254, § 1.

**Generally.** - This section unequivocally and clearly states that only counties having a population in excess of 25,000 are authorized to issue county auditorium bonds. 1953-54 Op. Att'y Gen. No. 5782.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Auditorium or stadium as public purpose for which public funds may be expended or taxing power exercised, 173 A.L.R. 415.

20 C.J.S. Counties § 218.



### **5-3-12. [Application of courthouse building laws.]**

The proceedings for calling, holding and canvassing the results of an election to determine whether such bonds are to be issued, the manner of issuance and the terms and provisions of such bonds, the sale thereof, the levy of taxes for the payment thereof, and the manner and time of payment thereof shall all be the same as is now or may hereafter be provided by law with respect to bonds issued for the purpose of building courthouses, and, in general, all of the provisions of law with respect to county courthouse bonds shall, so far as applicable, apply to the bonds herein authorized.

**History:** 1941 Comp., § 6-312, enacted by Laws 1941, ch. 101, § 2; 1953 Comp., § 6-3-12.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 20 C.J.S. Counties § 221.

### **5-3-13. [Federal aid and other donations authorized.]**

The respective boards of county commissioners of such counties are authorized and empowered to seek and obtain, if possible, from the United States government, or any department or agency thereof, financial aid and assistance to carry into effect the purposes hereof. Such boards of county commissioners are also authorized and empowered in their discretion to accept gifts and donations of any kind or character from any source whatsoever, including, but not limited to, a site for any such auditorium.

**History:** 1941 Comp., § 6-313, enacted by Laws 1941, ch. 101, § 3; 1953 Comp., § 6-3-13.

### **5-3-14. [Contracting power.]**

The boards of county commissioners of the several counties are hereby authorized and empowered to enter into any and all contracts and to do and perform any and all things necessary and proper to carry into effect the provisions hereof.

**History:** 1941 Comp., § 6-314, enacted by Laws 1941, ch. 101, § 4; 1953 Comp., § 6-3-14.

### **5-3-15. [Supervision and control of auditorium.]**

Any auditorium constructed pursuant hereto shall be under the supervision and control of the board of county commissioners of the county wherein it is located, and shall be maintained and used for such purposes as the boards of county commissioners may from time to time determine.

**History:** 1941 Comp., § 6-315, enacted by Laws 1941, ch. 101, § 5; 1953 Comp., § 6-3-15.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Auditorium: maintenance of auditorium, community recreational center, building or the like by municipal corporation as governmental or proprietary function for purposes of tort liability, 47 A.L.R.2d 544.

20 C.J.S. Counties § 147.

## **ARTICLE 4 PLAYGROUNDS AND RECREATIONAL EQUIPMENT**

### **5-4-1. [Governmental unit subject to act.]**

This act [5-4-1 to 5-4-9 NMSA 1978] shall apply to all municipalities, counties and school districts of the state of New Mexico.

**History:** 1941 Comp., § 71-1001, enacted by Laws 1945, ch. 67, § 1; 1953 Comp., § 6-4-1.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Liability of local government entity for injury resulting from use of outdoor playground equipment at municipally owned park or recreation area, 73 A.L.R.4th 496.

### **5-4-2. Dedication of lands and buildings as playgrounds and recreation centers.**

The governing body of such municipality or county may dedicate and set apart for use as playgrounds, recreation centers, zoos and other recreation purposes, any lands or buildings, or both, owned or leased by such municipality or county, and not dedicated or devoted to another or inconsistent public use; and authorized or provided by law for the acquisition of lands or buildings for public purposes by such municipality or county, acquire or lease lands or buildings, or both, within or beyond the constituted limits of such municipality or county, for playgrounds, recreation centers, zoos and other public recreational purposes, and when the governing body of the city, town or county, so dedicates, sets apart, acquires or leases lands or buildings for such purposes, it may provide for their conduct, equipment and maintenance according to the provisions of this act [5-4-1 to 5-4-9 NMSA 1978], by making an appropriation from the general municipality or county funds.

**History:** 1941 Comp., § 71-1002, enacted by Laws 1945, ch. 67, § 2; 1953 Comp., § 6-4-2; Laws 1963, ch. 53, § 1.

**Horse race not recreational purpose.** - Although persons may attend a horse race as a source of recreation, a horse race is not ordinarily attended for that primary purpose and does not normally constitute such an activity. It is not the same type of activity as is contemplated by the terms playground, zoo and recreational center and is not,

therefore, a recreational purpose within the meaning of this section. 1967 Op. Att'y Gen. No. 67-136.

**Neither is library.** - A library, being a place of study, of storing books and of recreational reading is not a "place of recreation." 1967 Op. Att'y Gen. No. 67-136.

**Purchase of stock in corporation conducting recreational facility** is not within the provisions of this section. 1967 Op. Att'y Gen. No. 67-136.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 202, 542; 59 Am. Jur. 2d Parks, Squares, and Playgrounds § 7.

Maintenance of auditorium, community recreational center, building or the like by municipal corporation as governmental or proprietary function for purposes of tort liability, 47 A.L.R.2d 544.

Municipal corporation's power to exchange its real property used for a park or public square, 60 A.L.R.2d 239.

20 C.J.S. Counties § 147; 63 C.J.S. Municipal Corporations § 1057; 64 C.J.S. Municipal Corporations § 1818.

### **5-4-3. Establishing system of supervised recreation; powers of managing boards.**

The governing body of any such municipality or county may establish a system of supervised recreation and it may, by resolution or ordinance, vest the power to provide, maintain and conduct playgrounds, recreation centers, zoos and other recreational activities and facilities in the school board, park board or other existing body or in a playground and recreation board as the governing body may determine. Such governing body or any board so designated shall have the power to maintain and equip playgrounds, recreation centers, zoos and buildings thereon, and it may, for the purpose of carrying out the provisions of this act [5-4-1 to 5-4-9 NMSA 1978], employ play leaders, playground directors, supervisors, recreation superintendents, zoo directors or such other officers or employees as they deem proper; make such expenditures therefor as the board shall deem necessary or advisable, from any fund provided for by said municipality or county, said expenditures not to exceed the amount of such appropriations. Such governing body may determine by ordinance or resolution the method by which zoo animals shall be obtained, traded, loaned, borrowed or disposed of, notwithstanding the provisions of Section 4 [5-4-4 NMSA 1978] of this act, or Sections 6-5-1 through 6-5-9, or Sections 14-47-1 through 14-47-12 NMSA 1953.

**History:** 1941 Comp., § 71-1003, enacted by Laws 1945, ch. 67, § 3; 1953 Comp., § 6-4-3; Laws 1963, ch. 53, § 2.

**Cross-references.** - As to the creation of county and municipality recreational fund, see 7-12-15 NMSA 1978.

**Compiler's note.** - Sections 14-47-1 to 14-47-12, 1953 Comp., referred to in this section, were repealed by Laws 1965, ch. 300, § 595. For present provisions, see 3-54-1 to 3-54-3 NMSA 1978.

Sections 6-5-1 to 6-5-9, 1953 Comp., referred to in this section, were repealed by Laws 1967, ch. 250, § 20. For present provisions, see 13-1-28 NMSA 1978 et seq.

**Legislative intent.** - The legislature intended the municipality to have the exclusive control of the operation of premises, for the benefit of such municipality, although it may delegate this. 1967 Op. Att'y Gen. No. 67-136.

#### **5-4-4. [Petition for establishment of a supervised recreational system; election.]**

Whenever a petition signed by at least twenty-five percent (25%) of the qualified and registered voters in the municipality or county shall be filed in the office of the clerk of such municipality or county requesting the governing body of such municipality or county to provide, establish, maintain and conduct a supervised recreation system, it shall be the duty of the governing body of such municipality or county to cause the question petitioned for to be submitted to the voters at a special election to be held in such municipality or county within ninety days from the date of filing of such petition, which election shall be held as now provided by law for the holding of other such elections in municipalities or counties. Provided, that this section shall not limit the power of the governing body of such municipality or county to provide such facilities of its own motion.

**History:** 1941 Comp., § 71-1004, enacted by Laws 1945, ch. 67, § 4; 1953 Comp., § 6-4-4.

#### **5-4-5. Establishment of joint recreational systems.**

Any two or more municipalities or counties may jointly provide, establish, maintain and conduct a recreation system and acquire property for and establish and maintain playgrounds, recreation centers, zoos and other recreational facilities and activities. Any school board may join with any municipality or county in conducting and maintaining a recreational system, and may expend such funds as are included in its maintenance budget for such purpose.

**History:** 1941 Comp., § 71-1005, enacted by Laws 1945, ch. 67, § 5; 1953 Comp., § 6-4-5; Laws 1963, ch. 53, § 3.

**Municipality may acquire property within boundaries of another,** with the consent of the second municipality. 1967 Op. Att'y Gen. No. 67-136.

#### **5-4-6. Acceptance of grants and donations by supervisory boards; limitation.**

A playground and recreation board or other authority in which is invested the power to provide, establish, maintain and conduct such supervised recreation system may accept any grant or devise or real estate or any gift or bequest of money or other personal property or any donation to be applied, principal or income, for either temporary or permanent use for playgrounds, zoos or recreational purposes, but if the acceptance thereof for such purposes will subject such municipalities or counties to additional expense for improvement, maintenance or removal, the acceptance of any grant or devise of real estate shall be subject to the approval of the governing body of the municipality or county.

**History:** 1941 Comp., § 71-1006, enacted by Laws 1945, ch. 67, § 6; 1953 Comp., § 6-4-6; Laws 1963, ch. 53, § 4.

#### **5-4-7. [Disposition of funds received by gift or bequest.]**

Money received for such purpose, unless otherwise provided by the terms of the gift or bequest shall be deposited with the treasurer of such municipality or county, to the account of the playground and recreation board or commission or other body having charge of such work, and the same may be withdrawn and paid out by such body in the same manner as other money appropriated for recreation purposes.

**History:** 1941 Comp., § 71-1007, enacted by Laws 1945, ch. 67, § 7; 1953 Comp., § 6-4-7.

#### **5-4-8. Power to issue bonds.**

The governing body of any municipality is hereby authorized to issue and dispose of negotiable bonds thereof, subject to the limitation and in accordance with Article IX of the constitution, for the purpose of securing funds for the acquisition of lands or buildings for playgrounds, recreation centers, zoos and other recreational purposes and the equipment thereof, to the extent and in accordance with the provisions of Sections 14-40-16 through 14-40-21 NMSA 1953.

**History:** 1941 Comp., § 71-1008, enacted by Laws 1945, ch. 67, § 8; 1953 Comp., § 6-4-8; Laws 1963, ch. 53, § 5.

**Emergency clauses.** - Laws 1963, ch. 53, § 6, makes the act effective immediately. Approved February 27, 1963.

**Compiler's note.** - Sections 14-40-16 to 14-40-21, 1953 Comp., referred to in this section, were repealed by Laws 1965, ch. 300, § 595. For present provisions, see 3-30-5 to 3-30-9 NMSA 1978.

**Counties have no inherent power to issue bonds**, and can do so only pursuant to statutory or constitutional authority. 1957-58 Op. Att'y Gen. No. 57-304.

**School bonds legal where facilities attached to school grounds.** - A school district could legally issue bonds for playground and recreational facilities which are to constitute part of the school grounds, but not in event they are to be entirely separate therefrom. 1947-48 Op. Att'y Gen. No. 5127.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 C.J.S. Municipal Corporations § 1908.

### **5-4-9. [Payment of expenses incurred in equipping, operating and maintaining recreational facilities.]**

All expenses incurred in the equipment, operation and maintenance of such recreational facilities and activities shall be paid from the treasuries of the respective municipality or county, and governing bodies of the same may annually appropriate, and cause to be raised by taxation, money for such purpose.

**History:** 1941 Comp., § 71-1009, enacted by Laws 1945, ch. 67, § 9; 1953 Comp., § 6-4-9.

### **5-4-10. Revenue bonds.**

A. The governing body of any municipality or the board of county commissioners of any county may issue recreational revenue bonds, payable solely from the net income derived from the tax on cigarettes authorized by the Cigarette Tax Act [Chapter 7, Article 12 NMSA 1978] and distributed to the municipality or county from the county and municipality recreational fund, and may pledge irrevocably the payment of these revenue bonds from the net income distributed from the county and municipality recreational fund.

B. The proceeds received from the sale of revenue bonds authorized in this section shall be used solely for the purpose of acquiring, constructing, repairing, extending or improving recreational facilities within or without the municipality or county or for refunding recreational bonds payable from the tax on cigarettes as further provided in Section 5-4-11 NMSA 1978. Bonds for such recreational facilities purpose and for refunding may be combined as a single issue.

**History:** 1953 Comp., § 6-4-10, enacted by Laws 1965, ch. 88, § 1; 1969, ch. 23, § 1; 1975, ch. 226, § 1.

**Cross-references.** - For county and municipality recreational fund, see 7-12-15 NMSA 1978.

### **5-4-11. Revenue bonds; refunding authorization; escrow; detail.**

A. Any municipality or county, having issued recreational revenue bonds payable from the cigarette tax pursuant to Sections 5-4-10 through 5-4-15 NMSA 1978 or pursuant to any other laws thereunto enabling the governing body of any municipality or the board of county commissioners of any county having issued such revenue bonds payable only out of the cigarette tax, may issue refunding revenue bonds for the purpose of refinancing, paying and discharging all or any part of such outstanding bonds of any one or more or [of] all outstanding issues:

(1) for the acceleration, deceleration or other modification of the payment of such obligations, including without limitation any capitalization of any interest thereon in arrears, or about to become due for any period not exceeding one year from the date of the refunding bonds;

(2) for the purpose of reducing interest costs or effecting other economies;

(3) for the purpose of modifying or eliminating restrictive contractual limitations pertaining to the issuance of additional bonds or otherwise concerning the outstanding bonds; or

(4) for any combination of such purposes.

B. There also may be pledged irrevocably for the payment of interest and principal on refunding bonds, the cigarette tax distributed to the municipality or county from the county and municipality recreational fund.

C. Any such refunding bonds shall be paid at maturity or on any permitted prior redemption date in the amounts, at the time and places and, if called prior to maturity, in accordance with any applicable notice provisions, all as provided in the proceedings authorizing the issuance of said refunded bonds or otherwise appertaining thereto, except for any such bond which is voluntarily surrendered for exchange or payment by the holder. Refunding bonds may be delivered in exchange for the outstanding bonds refunded or may be sold at either public or private sale.

D. No bonds may be refunded under Sections 5-4-10 through 5-4-15 NMSA 1978 unless the bonds either mature or are callable for prior redemption under their terms within fifteen years from the date of issuance of the refunding bonds, or unless the holders thereof voluntarily surrender them for exchange or payment. Provision shall be made for paying the bonds refunded within said period of time. Interest on any bond may be increased. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds, but only to the extent that any costs incidental to the refunding or any interest on the bonds refunded in arrears or about to become due within three years from the date of the refunding bonds, or both said incidental costs and interest, are capitalized with the proceeds of refunding bonds. The principal amount of the refunding bonds may also exceed the principal amount of the refunded bonds if the aggregate principal and interest costs of the refunding bonds do not exceed such unaccrued costs of the bonds refunded. The principal amount of the refunding

bonds may also be less than or the same as the principal amount of the bonds being refunded so long as provision is duly and sufficiently made for the payment of the refunded bonds.

E. The proceeds of refunding bonds shall either be immediately applied to the retirement of the bonds being refunded or be placed in escrow in a qualified depository, which is a member of the federal deposit insurance corporation to be applied to the payment of the bonds being refunded upon their presentation therefor. To the extent any incidental expenses have been capitalized, such refunding bond proceeds may be used to defray such expenses, and any accrued interest and any premium appertaining to a sale of refunding bonds may be applied to the payment of the interest thereon and the principal thereof, or both interest and principal, or may be deposited in a reserve therefor, as the municipality may determine. Nothing in this section requires the establishment of an escrow if the refunded bonds become due and payable within one year from the date of the refunding bonds and if the amounts necessary to retire the refunded bonds within that time are deposited with the paying agent for said refunded bonds. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other moneys available for its purpose. Any proceeds in escrow, pending such use, may be invested or reinvested in bills, certificates of indebtedness, notes or bonds which are direct obligations of, or the principal and interest of which obligations are unconditionally guaranteed by, the United States of America. Such proceeds and investments in escrow, together with any interest to be derived from any such investment, shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable therefrom, to pay the bonds being refunded as they become due at their respective maturities or due at any designated prior redemption date or dates in connection with which the municipality shall exercise a prior redemption option. Any purchaser of any refunding bond issued under Sections 3-31-1 through 3-31-12 NMSA 1978 is in no manner responsible for the application of the proceeds thereof by the municipality or county or any of their officers, agents or employees.

F. Refunding bonds may bear such additional terms and provisions as may be determined by the municipality or county subject to the limitations in this section and Sections 5-4-10 through 5-4-15 NMSA 1978.

**History:** 1953 Comp., § 6-4-10.1, enacted by Laws 1975, ch. 226, § 2.

## **5-4-12. Terms of bonds.**

A. Recreational revenue bonds issued as authorized in Section 5-4-10 NMSA 1978 shall:

(1) bear interest at a net effective interest rate and a coupon rate or rates of not exceeding the maximum rates permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978] and such interest shall be payable annually or semiannually;



(2) be serial in form and maturity or may consist of one bond payable one time or in installments;

(3) be numbered consecutively from one upward; and

(4) be sold for cash at a public or private sale.

B. Recreational revenue bonds may be payable at any time or times not exceeding twenty years from the date of the bonds.

**History:** 1953 Comp., § 6-4-11, enacted by Laws 1965, ch. 88, § 2; 1975, ch. 226, § 3.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Power of governmental unit to issue bonds as implying power to refund them, 1 A.L.R.2d 134.

### **5-4-13. Ordinance or resolution issuing bonds; validation.**

At any regular or special meeting called for the purpose of issuing recreational revenue bonds, the governing body of the municipality or H-class county by ordinance, or board of county commissioners of a county, by resolution, each adopted by a two-thirds vote of all the members of the governing body or board of county commissioners, whichever is applicable, may issue recreational revenue bonds authorized in Section 5-4-10 NMSA 1978. The revenue bonds shall be:

A. signed by the presiding officer of the governing body of the municipality or board of county commissioners;

B. attested by the municipal clerk or county clerk;

C. validated by the seal of the municipality or county; or the revenue bonds may be authenticated as provided under the Uniform Facsimile Signature of Public Officials Act [6-9-1 to 6-9-6 NMSA 1978]; and

D. if such bonds bear coupons, the coupons shall bear the facsimile signature of the treasurer of the municipality or county.

**History:** 1953 Comp., § 6-4-12, enacted by Laws 1965, ch. 88, § 3; 1975, ch. 226, § 4.

### **5-4-14. Retirement of bonds only from cigarette tax proceeds; tax levy irrevocable.**

A. Recreational revenue bonds issued under the authority of Sections 5-4-10 through 5-4-15 NMSA 1978 are:

(1) not general obligations of the municipality or county issuing them; and

(2) collectible only from the proportionate income distributed to the county or municipality from the county and municipality recreational fund, which distributions are pledged.

B. Each recreational revenue bond shall state that the bond is collectible solely from the proportionate income distributed from such county and municipality recreational fund which distributions are pledged. The bondholder may not look to any other fund for the payment of principal and interest of such bond.

C. If any recreational revenue bonds are issued under the provisions of Section 5-4-10 NMSA 1978, the law establishing the additional cigarette tax from which money is pledged for the payment of revenue bonds shall not be repealed and the amount of money so received shall not be decreased until the principal amount of the revenue bonds and their interest has been paid.

**History:** 1953 Comp., § 6-4-13, enacted by Laws 1965, ch. 88, § 4; 1975, ch. 226, § 5.

**Emergency clauses.** - Laws 1975, ch. 226, § 7, makes the act effective immediately. Approved April 7, 1975.

**Severability clauses.** - Laws 1975, ch. 226, § 6, provides for the severability of the act if any part or application thereof is held invalid.

### **5-4-15. Proceeds not to be divested [diverted]; exclusions of this act.**

A. Any person diverting or expending money received from the sale of recreational revenue bonds for any purpose other than those purposes authorized in Section 5-4-10 NMSA 1978, is guilty of a misdemeanor.

B. The provisions of Sections 5-4-10 through 5-4-15, 7-12-2, 7-12-6 and 7-12-14 NMSA 1978 do not apply to any municipality that issued bonds pursuant to the authority granted by Chapter 151 of the Laws of 1953 until the bonds have been fully paid.

**History:** 1953 Comp., § 6-4-14, enacted by Laws 1965, ch. 88, § 5.

**Effective dates.** - Laws 1965, ch. 88, § 6, makes the act effective on July 1, 1965.

**Compiler's note.** - Section 7-12-14 NMSA 1978, referred to in Subsection B, was repealed by Laws 1983, ch. 211, § 42, effective July 1, 1983.

Chapter 151 of Laws 1953, referred to in Subsection B, was repealed by Laws 1965, ch. 300, § 595.

**Meaning of "this act".** - The words "this act" in the catchline to this section apparently refer to Laws 1965, ch. 88, compiled as 5-4-10, 5-4-12 to 5-4-15 NMSA 1978.

## **5-4-16. School districts; community recreational facilities.**

A. A school district may construct, own or operate community recreational facilities within the school district. A school district may operate the community recreational facilities on land owned by the school district or on land acquired by the school district for the community recreational facilities.

B. A local school board of a school district may enter into agreements with any state or federal agency or department to obtain assistance in acquiring, constructing or operating community recreational facilities.

C. Local operational funds may not be expended to purchase land or construct buildings pursuant to this section except as provided in Section 22-8-41 NMSA 1978.

**History:** 1953 Comp., § 6-4-15, enacted by Laws 1967, ch. 233, § 1.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 59 Am. Jur. 2d Parks, Squares, and Playgrounds § 1 et seq.; 68 Am. Jur. 2d Schools § 72.

78 C.J.S. Schools and School Districts § 243.

## **ARTICLE 5 JOINT CITY-COUNTY BUILDING**

### **5-5-1. Short title.**

This act [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978] shall be known as the "Joint City-County Building Law."

**History:** 1953 Comp., § 6-9-1, enacted by Laws 1959, ch. 300, § 1.

### **5-5-2. Legislative declaration.**

It is hereby declared as a matter of legislative determination that providing counties and cities, towns and villages constituting county seats in the state of New Mexico with the purposes, powers and duties, rights, privileges and immunities provided in this act [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978] will serve a public use and will promote the health, safety, prosperity, security and general welfare of the inhabitants thereof and of the state of New Mexico; and that the acquisition, improvement, equipment, maintenance and operation of any project herein authorized is in the public interest and constitutes a part of the established and permanent policy of the state of New Mexico. For the accomplishment of these purposes the provisions of this law shall be broadly construed.

**History:** 1953 Comp., § 6-9-2, enacted by Laws 1959, ch. 300, § 2.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 541.

20 C.J.S. Counties § 145; 64 C.J.S. Municipal Corporations § 1808.

### **5-5-3. Definitions.**

As used in the Joint City-County Building Law [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978], the following words or phrases shall be defined as follows:

A. "city" means any incorporated city, town or village which is a county seat in the state of New Mexico, whether incorporated or governed under a general act, special act or special charter of any type and includes any combination of such cities, towns or villages located in adjacent counties;

B. "council" or "city council" means the city council, city commission, board of commissioners, board of trustees or other governing body of a city in which the legislative powers of the city are vested. "Councilmen" means the aldermen or other members of the council;

C. "county" means any county or combination of adjacent counties in the state of New Mexico;

D. "board" means the board of county commissioners. "Commissioners" or "county commissioners" means the members of a board;

E. "municipality" means a city or county;

F. "governing body" means a council or board;

G. "building" means any building for use as a county courthouse, city hall, jail, regional jail, library, museum, utility office, garage for housing county and city vehicles, transportation office, communications office, maintenance shop, warehouse, cafeteria and restaurant facilities for county and city personnel, sheriff's office, police station, fire station, records office and administration building and for similar uses, or any combination thereof, to be acquired and jointly owned by a county and a city as tenants in common;

H. "site" means land and any estate, interest or right therein on which to locate a building. Any building site may include landscaped grounds and off-street parking facilities, including but not limited to improved or unimproved parking lots and buildings erected above or below the surface of the land for the accommodation of parked motor and other vehicles;

I. "acquisition" or "acquire" means the acquisition by purchase, construction, installation, reconstruction, condemnation, lease, rent, gift, grant[,] endowment, bequest, devise,

contract and other acquisition as may be deemed necessary or desirable by the board and council, or any combination thereof;

J. "improvement" or "improve" means the extension, betterment, alteration, reconstruction, repair and other improvement as may be deemed necessary or desirable by the board and council, or any combination thereof;

K. "equipment" or "equip" means furnishing all necessary or desirable, related or appurtenant, facilities, or any combination thereof;

L. "project" means any building site therefor, structure, facility and undertaking of any kind which a county and a city are authorized by the Joint City-County Building Law to acquire, improve, equip, maintain and operate. A project may consist of any kind or all kinds of personal and real property, including but not limited to land, improvements and fixtures thereon, property of any nature appurtenant thereto or used in connection therewith and every estate, interest and right therein, legal or equitable, including terms for years, or any combination thereof;

M. "disposition" or "dispose" means the sale, lease, exchange, transfer, assignment and other disposition as may be deemed necessary or desirable by the board and council, or any combination thereof;

N. "federal government" means the United States or any federal agency, instrumentality or corporation;

O. "state" means the state of New Mexico or, except where the subject matter or context is repugnant thereto, any state agency, instrumentality or corporation;

P. "elector" of a municipality means a registered and qualified elector thereof;

Q. "publication" or "publish" means publication once a week for at least three consecutive weeks commencing at least twenty days prior to the election in any newspaper published in a county;

R. for the purpose of computing any period of time prescribed in the Joint City-County Building Law, including but not limited to publications, the day of the first publication, other act or designated time shall be excluded and the day of the last publication, other act or designated time shall be included; and

S. whenever such construction is applicable, words used in the Joint City-County Building Law importing singular or plural number may be construed so that one number includes both; words importing masculine gender shall be construed to apply to the feminine gender as well; and the word "person" may extend to and include a firm and corporation, except in any reference to any election; provided, however, that these rules of construction shall not apply to any part of that law containing express provisions excluding such construction or where the subject matter or context is repugnant thereto.

**History:** 1953 Comp., § 6-9-3, enacted by Laws 1959, ch. 300, § 3; 1977, ch. 28, § 1; 1983, ch. 264, § 1.

**The 1977 amendment** substituted "the Joint City-County Building Law" for "this act" throughout the section, deleted "Taxpaying" preceding "elector" at the beginning of Subsection P, deleted "who has paid a property tax therein during the preceding year" at the end of Subsection P, rewrote Subsection Q to the extent that a detailed comparison is not practicable, added "and" at the end of Subsection R and substituted "that" for "this" preceding "act" in Subsection S.

**The 1983 amendment** substituted "means" for "shall mean" throughout the section, added "and includes any combination of such cities, towns or villages located in adjacent counties" at the end of Subsection A, inserted "or combination of adjacent counties" in Subsection C, inserted "regional jail" following "jail" in Subsection G, deleted "necessarily" preceding "limited to improved" in the second sentence in Subsection H, deleted "of America" following "States" in Subsection N and substituted "law" for "act" preceding "containing express provisions" near the end of Subsection S.

**Effective dates.** - Laws 1983, ch. 264, contains no effective date provision, but was enacted at the session which adjourned on March 19, 1983. See N.M. Const., art. IV, § 23.

#### **5-5-4. Jointly owned projects.**

Any county and city shall have the power, if so authorized by a resolution adopted at any regular or special meeting by at least two-thirds of all commissioners and by an ordinance adopted at any regular or special meeting by at least three-fifths of all councilmen, to acquire a building or buildings and a site or sites therefor wholly within the county and wholly within the city.

**History:** 1953 Comp., § 6-9-4, enacted by Laws 1959, ch. 300, § 4.

#### **5-5-5. Powers of county and city.**

Every county and city having been authorized to acquire any building, in addition to other powers conferred by the Joint City-County Building Law [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978], shall thereafter have the following powers, jointly and severably [severally]:

A. to improve, equip, use, supervise, maintain, control, operate and dispose of the building and site therefor, any part thereof or interest therein; and to acquire, improve, maintain, operate and dispose of a site, equipment, fixtures, other improvements and appurtenances therefor;

B. to insure or provide for the insurance of any project or part thereof against such risks and hazards as the county and city may deem advisable;

C. to exercise the power of eminent domain in the manner provided by the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978];

D. to receive, control, invest and order the expenditure of any and all money and funds pertaining to any project;

E. to arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works or facilities for or in connection with any project;

F. to hire and retain independent contractors, agents and employees, including but not limited to engineers, architects, fiscal agents, attorneys at law and any other persons necessary or desirable to effect the purposes of the Joint City-County Building Law and to prescribe their compensation, duties and other terms of employment;

G. to fix and levy and from time to time increase and decrease rates, tolls and charges for commodities, services or facilities furnished by, through or in connection with any project;

H. to make and keep records in connection with any project;

I. to arbitrate any differences arising in connection with any project;

J. to commence, defend, conduct, terminate by settlement or otherwise, and otherwise participate in any litigation or other court, judicial or quasi-judicial action either at law or in equity, by suit, action, mandamus or other proceedings, concerning any project;

K. to use for or in connection with any project money, real or personal property legally available therefor to a municipality, not originally acquired therefor;

L. to levy and collect from year to year for use or in connection with any project general (ad valorem) property taxes in the manner provided by law, including but not necessarily limited to the payment of indebtedness incurred therefor;

M. to use for or in connection with any project the proceeds of any tolls, rates, charges, fees, license taxes, other excise taxes or quasi-excise taxes legally available therefor which the municipality is empowered to fix, levy and collect;

N. to make contracts and execute all instruments necessary or convenient, including but not limited to contracts with the federal government and the state;

O. to acquire any construction work, improvement or improvements of any nature in connection with any project without public advertisement and letting; provided, however, that where the entire cost, value or amount of such work including labor and materials shall exceed five thousand dollars (\$5,000) except such work done by employees of the county or city with supplies and materials purchased by either as provided in this section, or except by labor or supplies and materials, or all of such, supplied under

agreement with the federal government or state, or both, shall be done only under independent contract to be entered into by the county or city, or by both, with the lowest responsible bidder submitting the lowest and best bid upon proper terms after due public notice by publication has been given asking for competitive bids; the county or city, or both, shall have the right to reject any and all bids and to waive any irregularity in any bid. Any contract may be let on a lump sum or unit basis. No contract shall be entered into for such work unless the contractor shall give an undertaking with a sufficient surety or sureties approved by the board or council or both and in an amount fixed thereby for the faithful performance of the contract. Upon default in the performance of any contract, the proper official may advertise and relet the remainder of the work without further resolution and deduct the cost from the original contract price and recover any excess cost by suit on the original bond, or otherwise. The county or city, or both, shall have the power to make any improvement, or portion thereof, in connection with any project, directly by the officers, agents and employees thereof, with supplies and materials purchased or otherwise acquired therefor. All supplies and materials purchased therefor by the board or council, or both, (but not by a contractor) costing five hundred dollars (\$500) or more shall be purchased only after notice by publication for competitive bids. The board or council, or both, shall accept the lowest bid, kind, quality and material being equal, but either or both shall have the right to reject any and all bids, to waive any irregularity in any bid, and to select a single item from any bid; but the provision as to bidding shall not apply to the purchase of patented and manufactured products offered for sale in a noncompetitive market or solely by a manufacturer's authorized dealer;

P. to borrow money and incur indebtedness and other obligations and to evidence the same by the issuance of notes and bonds in accordance with the provisions of the Joint City-County Building Law;

Q. to refund any bonds without an election; provided, however, that the obligation shall not be increased by any refunding except for any extension of the maturity of any bond refunded by not to exceed fifteen years and for any increase in interest rates; and provided further that otherwise the terms and conditions of refunding bonds shall be substantially the same as those of the original issue of bonds, unless authorized by a majority of the taxpaying electors voting upon a proposal authorizing the issuance of the refunding bonds;

R. to exercise all or any part or combination of the powers granted by the Joint City-County Building Law; and

S. to do and perform any and all other acts and things necessary, convenient, desirable or appropriate to carry out the provisions of the Joint City-County Building Law, and to have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted in that act. Such specific powers shall not be considered as a limitation upon any power necessary, convenient, desirable or appropriate to carry out the purposes and intent of that act.



**History:** 1953 Comp., § 6-9-5, enacted by Laws 1959, ch. 300, § 5; 1981, ch. 125, § 46.

**Cross-references.** - For Joint Powers Agreements Act, see 11-1-1 NMSA 1978 et seq.

**The 1981 amendment** deleted "so" preceding "authorized" in the introductory paragraph, substituted "the Joint City-County Building Law" for "this act" in the introductory paragraph and in Subsections F, P and S and for "herein granted" in Subsection R, substituted "the Eminent Domain Code" for "any applicable statutory provisions and laws of the state of New Mexico and acts amendatory thereof and supplemental thereto, heretofore or hereafter adopted" in Subsection C, substituted "money" for "moneys" in Subsection D, substituted "money, real or" for "moneys, land and other real and" in Subsection K, substituted "to" for "of" near the end of Subsection K, deleted "for" following "for use" in Subsection L, substituted "with" for "which" following "county or city" near the middle of the first sentence of Subsection O, substituted "provided in this section" for "hereinafter provided" near the middle of the first sentence of Subsection O, substituted "that act" for "this act" once in each sentence of Subsection S and made other minor changes.

**Effective dates.** - Laws 1981, ch. 125, § 64, makes the act effective on July 1, 1981.

### **5-5-6. Agreements between county and city.**

A county and a city may from time to time enter into agreements, long terms and short terms, with each other concerning any project, including but not necessarily limited to agreements concerning any power granted to either or both by this act [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978], the exercise of such powers, and conditions and limitations thereupon, and including by way of example and not by limitation, a contract allocating a portion of any project to the exclusive use and control of any party thereto, a contract concerning the construction and equipment of a building, the plans and specifications therefor, and the work and materials incidental thereto, including the acquisition or improvement of the site therefor, or both, a contract for the ownership, care, custody, control, improvement, operation and maintenance of any project after its acquisition and for defraying expenses incurred therefor, a contract concerning the appointment of personnel therefor or providing for rules, regulations and orders for the use by the public and charges, if any, therefor, a contract for the allocation between the county and city of the total utilization of said building, the method of effecting such allocation, and delineating the rights, if any, of leasing any space in said building and its facilities, and a contract concerning the maintenance of records of and for any project.

**History:** 1953 Comp., § 6-9-6, enacted by Laws 1959, ch. 300, § 6.

### **5-5-7. Borrowing money and securities evidencing loans.**

Any county and city shall each have the power, separately and severably from time to time to borrow money and issue the following securities to evidence such loans, to finance in whole or in part the cost of any project or any part thereof:

short-term notes;

general obligation bonds, maturing serially is [in] not to exceed thirty years from the date thereof; and

revenue bonds, maturing serially is [in] not to exceed forty years from the date thereof.

**History:** 1953 Comp., § 6-9-7, enacted by Laws 1959, ch. 300, § 7.

### **5-5-8. Short-term notes.**

A municipality, upon the affirmative vote of at least two-thirds of the members of its governing body present and constituting a quorum, is hereby authorized to borrow money without an election in anticipation of the collection of taxes or other revenues and to issue short-term notes to evidence the amount so borrowed. Such short-term notes shall be payable from the fund for which the money was borrowed; shall mature before the close of the fiscal year in which the money is so borrowed; and shall not be extended or funded except in compliance with the provisions of this act [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978] concerning the issuance of general obligation bonds.

**History:** 1953 Comp., § 6-9-8, enacted by Laws 1959, ch. 300, § 8.

### **5-5-9. Limitations upon incurring debts.**

No general obligation bonds or other evidences of indebtedness the payment of which is secured wholly or in part by a pledge of any proceeds of general (ad valorem) property taxes or to which the full faith and credit of a municipality are pledged shall be issued, except as follows:

A. a county shall so borrow only for the purpose of erecting necessary public buildings in connection with any project, and in any such case only after the proposition to create such debt shall have been submitted at a general or special election to the registered qualified electors of the county and approved by a majority of those voting thereon;

B. a city shall so contract any such debt only by an ordinance, which shall be irrevocable until the indebtedness therein provided for shall have been fully paid or discharged, and which shall specify the purposes to which the funds to be raised shall be applied. No such debt shall be created unless the question of incurring the same shall, at a regular election for councilmen or other officers of such city, have been submitted to a vote of the registered qualified electors thereof, and a majority of those voting on the question shall have voted in favor of creating such debt; and

C. no municipality 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 municipality as shown by the last preceding assessment for state or county taxes, but excluding debts contracted by a city for the construction or purchase of a

system for supplying water or of a sewer system for such city; and all bonds or obligations issued in excess of such amount shall be void.

**History:** 1953 Comp., § 6-9-9, enacted by Laws 1959, ch. 300, § 9; 1977, ch. 28, § 2.

**The 1977 amendment,** in Subsection A, deleted "primary" following "general," inserted "registered" preceding "qualified" and deleted "who paid a property tax therein during the preceding year" following "county" near the end and, in the last sentence of Subsection B, substituted "the registered" for "such" preceding "qualified electors," deleted "as have paid a property tax therein during the preceding year" following "thereof," deleted "by ballot deposited in a separate ballot box" following "question" and added "and" at the end.

### **5-5-10. General obligation bond and debt elections.**

The governing body of any municipality may fix a date for an election and may order the submission at the election of a question or proposal to authorize the issuance of general obligation bonds or the incurrence of any other indebtedness for any project or part thereof authorized by the Joint City-County Building Law [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978] subject to the limitations of Section 5-5-9 NMSA 1978; and notice of the election shall be given by publication, commencing at least twenty days prior to the election. The notice of election shall be signed by the clerk of the municipality and by the chairman of the board, mayor of the city or other titular head of the municipality; and the notice shall contain:

- A. the time and place or places of holding the election;
- B. the hours during the day in which the polls will be open, which shall be the same as then provided for general elections;
- C. the purpose of the proposal for issuing bonds or otherwise incurring an indebtedness;
- D. the maximum amount of bonds and the maximum rate of interest, not to exceed six per centum per annum, in the case of any bond proposal; and
- E. the maximum number of years, not exceeding thirty, from the date of the bonds or other evidence of indebtedness, during which the bond shall mature or the indebtedness shall be defrayed.

The statement as to the place or places of holding the election may merely refer generally to the place or places theretofore designated for holding the general, regular municipal or other election with which the bond or other debt election may be consolidated, or refer generally to the place or places for holding a previous election, or may consist of some other similarly sufficient statement designating such place or places by reference thereto or a general description thereof.

A special registration shall be held for any qualified elector not registered for any such debt election which is not consolidated with nor held within the sixty days next succeeding an election for which a registration was held. In such event, the special registration shall be held for a ten-day period commencing the twenty-ninth day next preceding the election and ending the twentieth day next prior thereto. The county clerk or other official required by law to conduct registrations for the municipality, upon being given timely notice of the election by the governing body, shall give notice of the special registration by publication, commencing at least thirty-two days next prior to the election, and stating the place and the days and hours the special registration will be held.

Except for notices of elections, except for the necessity of and the time of holding registrations for elections and except for any provisions inconsistent with any provision in the Joint City-County Building Law [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978] specifically made or necessarily implied, any debt election for any project shall be held, conducted, canvassed and otherwise governed as nearly as practicable as then provided for a regular municipal election in the case of any city election and as then provided for a general election in the case of a county election.

**History:** 1953 Comp., § 6-9-10, enacted by Laws 1959, ch. 300, § 10; 1977, ch. 28, § 3.

**The 1977 amendment** substituted "the Joint City-County Building Law" for "this act" throughout the section, substituted "Section 5-5-9 NMSA 1978" for "section 9 thereof" in the introductory paragraph, deleted "primary" following "general" in the second paragraph and deleted "(No qualified and registered elector shall need to reregister to evidence his taxpaying qualification for such a debt election)" preceding the last sentence of the third paragraph.

### **5-5-11. Authorization of bonds.**

A board by resolution or a council by ordinance shall authorize the issuance by the municipality, upon the affirmative vote of at least a majority of the members of the governing body present and constituting a quorum, of any general obligation bond series upon being authorized so to do by the electors of the municipality voting thereon, as provided in Chapter 5, Article 5 NMSA 1978 in detail, or the issuance by the municipality or county, upon the affirmative vote of at least two-thirds of the members of its governing body present and constituting a quorum, of any revenue bond series without necessarily being authorized at an election or by any other preliminaries.

**History:** 1953 Comp., § 6-9-11, enacted by Laws 1959, ch. 300, § 11; 1977, ch. 28, § 4; 1983, ch. 198, § 1.

**The 1977 amendment** substituted "registered qualified" for "taxpaying" preceding "electors" near the middle of the section and inserted "of the" preceding "members" near the end of the section.

**The 1983 amendment** deleted "registered qualified" preceding "electors," inserted "in Chapter 5, Article 5 NMSA 1978" and inserted "or county" following "by the municipality."

**Effective dates.** - Laws 1983, ch. 198, contains no effective date provision, but was enacted at the session which adjourned on March 19, 1983. See N.M. Const., art. IV, § 23.

## **5-5-12. Payment of bonds.**

The principal of and interest on general obligation bonds herein authorized to be issued, and any prior redemption premium or premiums, shall be payable from the proceeds of general (ad valorem) property taxes levied without limitation as to rate or amount, except to the extent other revenues are made available therefor. The principal of and interest on revenue bonds herein authorized to be issued and any prior redemption premium or premiums shall be payable solely from the gross or net revenues derived from the operation of any project for the acquisition or improvement of which the bonds are issued, including without limiting the generality of the foregoing, revenues of a prior existing project which is improved by the expenditure of the bond proceeds, and revenues of improvements theretofore or thereafter acquired for such project which are not acquired by the expenditure of such bond proceeds, and from revenues and proceeds of any tolls, rates, charges, fees, license taxes, other excise taxes or quasi-excise taxes which the municipality is empowered to fix, levy and collect (but excluding any general (ad valorem) property taxes), or any combination of such revenues and proceeds. Any such revenues or proceeds pledged directly or as additional security for the payment of bonds of any one issue or series which revenues are not exclusively pledged therefor may subsequently be pledged directly or as additional security for the payment of the bonds of one or more issues or series subsequently authorized. If more than one series of bonds shall be issued hereunder payable from the same revenues or proceeds, priority of lien thereof on such revenues shall depend on the provisions of the proceedings authorizing the issuance of such bonds, it being within the discretion of the governing body at the time it authorizes the first such series to provide that subsequent series of bonds payable from such revenues may not be issued, that subsequent series of bonds shall be subordinate as to lien or that subsequent series of bonds shall enjoy parity of lien if such conditions and restrictions as may be specified in such proceedings can be met. All bonds of the same issue or series shall be equally and ratably secured without priority by reason of number, date of maturity, date of bonds, of sale, of execution or of delivery, by a lien on said revenues and proceeds in accordance with the provisions of this act [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978] and the proceedings authorizing said bonds, except to the extent the proceedings shall otherwise specifically provide. All bonds not issued payable solely from such revenues and proceeds shall be the general obligations of the municipality, and the full faith and credit of the municipality shall be pledged for the payment thereof.

**History:** 1953 Comp., § 6-9-12, enacted by Laws 1959, ch. 300, § 12.

### **5-5-13. Municipality's limited liability on bonds and recital therein.**

Neither the governing body nor any person executing any bond authorized by this act [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978] shall be liable personally thereon by reason of its issuance hereunder. Except for general obligation bonds, bonds issued pursuant to this act shall not be a debt, liability or general obligation of the municipality issuing them, and it shall not be liable thereon, nor shall it thereby pledge its full faith and credit for their payment, nor shall the bonds be payable out of any funds other than the revenues and proceeds pledged to the payment thereof; and each such bond shall in substance so state. Such bonds shall not constitute a debt or indebtedness within the meaning of any constitutional, statutory or charter debt limitation or restriction. The payment of bonds shall not be secured by an encumbrance, mortgage or other pledge of property of the municipality, except for revenues and tax proceeds pledged for their payment. No property of the municipality, subject to said exceptions, shall be liable to be forfeited or taken in payment of the bonds.

**History:** 1953 Comp., § 6-9-13, enacted by Laws 1959, ch. 300, § 13.

### **5-5-14. Incontestable recital in bonds.**

It may be provided in any proceedings authorizing any bonds hereunder that such bond shall recite that it is issued under authority of this act [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978]. Such recital shall conclusively impart full compliance with all of the provisions of this act, and all bonds issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

**History:** 1953 Comp., § 6-9-14, enacted by Laws 1959, ch. 300, § 14.

### **5-5-15. Form of bonds.**

Any general obligations bonds or revenue bonds herein authorized to be issued shall bear such date or dates, shall be in such denomination or denominations, and shall mature serially, commencing not later than three years from the date therefrom, at times not exceeding the estimated life of the improvements acquired with the bond proceeds nor the maximum limitation stated in Section 7 [5-5-7 NMSA 1978] hereof, shall bear interest payable annually or semiannually, except that interest on any bond may be first payable for any period not in excess of one year, at such rate or rates not greater than six per centum per annum, shall be payable in such medium of payment at such place or places within or without the state and at the option of the governing body may be in one or more series, may be made subject to prior redemption in such order or by lot in advance of maturity at such time or times without or with the payment of such premium or premiums not exceeding six per centum of the principal amount of each bond redeemed, may provide for the payment of interest thereon from the proceeds thereof for a period not to exceed three years from the date thereof, may be issued with privileges for registration for payment as to principal and as to both principal and interest, or either, and generally shall be issued in such manner, in such form, either

coupon or registered, carrying such conversion or registration privileges, with such recitals, terms, covenants and conditions and with such other details as may be provided by the governing body in the proceedings authorizing the bonds, except as herein otherwise provided. Pending preparations of the definitive bonds, interim receipts or certificates in such form and with such provisions as the governing body may determine may be issued. Except for payment provisions herein specifically provided, said bonds and any interest coupons thereto attached shall be fully negotiable and constitute negotiable instruments within the meaning of and for all the purposes of the Negotiable Instruments Law as that law is now or may hereafter be in force in the state of New Mexico. If lost or completely destroyed, any bond may be reissued in the form and tenor of the lost or destroyed bond upon the owner furnishing to the satisfaction of the governing body:

- A. proof of ownership;
- B. proof of loss or destruction;
- C. a surety bond in twice the face amount of the bond and coupons; and
- D. payment of the cost of preparing and issuing the new bond.

**History:** 1953 Comp., § 6-9-15, enacted by Laws 1959, ch. 300, § 15.

**Negotiable Instruments Law repealed.** - The Negotiable Instruments Law was repealed by Laws 1961, ch. 96, § 10-102. For provisions relating to commercial paper under the Uniform Commercial Code, see 55-3-101 to 55-3-805 NMSA 1978.

### **5-5-16. Alternate bond form.**

Notwithstanding any other provision of law, the governing body may in any proceedings authorizing bonds hereunder provide for the initial issuance of one or more bonds (in this section called "bond") aggregating the amount of the entire issue and may make such provision for installment payments of the principal amount of any such bond as it may consider desirable and may provide for the making of any such bond payable to bearer or otherwise, registrable as to principal or as to both principal and interest, and where interest accruing thereon is not represented by interest coupons, for the endorsing of payments of interest on such bond. The governing body may further make provisions in any such resolution for the manner and circumstances in and under which any such bond may in the future, at the request of the holder thereof, be converted into bonds of smaller denominations, which bonds of smaller denominations may in turn be either coupon bonds or bonds registrable as to principal or principal and interest.

**History:** 1953 Comp., § 6-9-16, enacted by Laws 1959, ch. 300, § 16.

### **5-5-17. Execution of bonds.**

Any such general obligation bonds or revenue bonds shall be executed in the name of and on behalf of the municipality and signed by the chairman of the board, mayor of the city or other titular head of the municipality with its seal affixed thereto and attested by its clerk. Except for such bonds which are registrable for payment of interest, interest coupons payable to bearer shall be attached to the bonds and shall bear the original or facsimile signature of said two officials. The bonds and coupons bearing the signatures of the officers in office at the time of the signing thereof shall be the valid and binding obligations of the municipality, notwithstanding that before the delivery thereof and payment therefor any or all of the persons whose signatures appear thereon shall have ceased to fill their respective offices.

**History:** 1953 Comp., § 6-9-17, enacted by Laws 1959, ch. 300, § 17.

**Cross-references.** - For facsimile signatures of public officers, see 6-9-1 to 6-9-6 NMSA 1978.

### **5-5-18. Sale of bonds.**

Any general obligation bonds or revenue bonds shall be sold at public or private sale for not less than the principal amount thereof and accrued interest at a price which will not result in a net interest cost to the municipality of more than six per centum per annum computed to maturity according to standard tables of bond values. Nothing herein contained shall be construed as permitting the sale of bonds for other than lawful money of the United States of America.

**History:** 1953 Comp., § 6-9-18, enacted by Laws 1959, ch. 300, § 18.

### **5-5-19. Application of proceeds.**

All moneys received from the issuance of any bonds herein authorized shall be used solely for the purpose (or purposes) for which issued, including without limiting the generality of the foregoing, the payment of preliminary expenses; provided, however, that any unexpended balance of such bond proceeds remaining after the completion of the acquisition of [or] improvement of the project or part thereof for which such bonds were issued shall be paid immediately into the fund created for the payment of the principal of said bonds and shall be used therefor. The validity of said bonds shall not be dependent on or affected by the validity or regularity of any proceedings relating to the acquisition or improvement of the project for which the bonds are issued; and the purchaser or purchasers of the bonds shall in no manner be responsible for the application of the proceeds of the bonds by the municipality or any of its officers, agents and employees.

**History:** 1953 Comp., § 6-9-19, enacted by Laws 1959, ch. 300, § 19.

### **5-5-20. Covenants in bond proceedings.**



Any proceedings authorizing the issuance of bonds under this act [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978] may contain covenants (notwithstanding such covenants may limit the exercise of powers conferred by this act) as to any one or more of the following:

A. the tolls, rates, rentals, charges, license taxes, other excise taxes or quasi-excise taxes, and general taxes to be fixed, charged or levied, the collection, use and disposition thereof, and their sufficiency, including but not limited to joint billing for and the discontinuance of facilities, commodities or projects, the foreclosure of liens for delinquencies and the collection of penalties;

B. the creation and maintenance of reserves or sinking funds and the regulation, use and disposition thereof;

C. a fair and reasonable payment by any municipality from its general fund or other available moneys to the account of a designated project for the facilities or commodities furnished or services rendered thereby to the municipality or any of its departments, boards or agencies;

D. the purpose or purposes to which the proceeds of the sale of bonds may be applied and the use and disposition thereof;

E. the issuance of other or additional bonds payable from or constituting a charge against or lien upon any revenues pledged for the payment of bonds and the creation of future liens and encumbrances thereagainst;

F. the operation and maintenance of any project;

G. the insurance to be carried thereon and use and disposition of insurance moneys;

H. books of account and the inspection and audit thereof;

I. events of default, rights and liabilities arising therefrom, and the rights, liabilities, powers and duties arising upon the breach by the municipality of any covenants, conditions or obligations;

J. the vesting in a trustee or trustees, and the limitation of liabilities thereof, and as to the terms and conditions upon which the holders of the bonds or any portion, percentage or amount of them may enforce any covenants made under this act or duties imposed thereby;

K. the terms and conditions upon which the holders of the bonds or of a specified portion, percentage or amount thereof or any trustee therefor shall be entitled to the appointment of a receiver, which receiver may enter and take possession of any project, operate and maintain the same, prescribe tolls, fees, rates, rentals, charges and taxes, and collect, receive and apply all revenues thereafter arising therefrom in the same manner as the municipality itself might do;

L. a procedure by which the terms of any proceedings authorizing bonds or any other contract with any holders of bonds, including but not limited to an indenture of trust or similar instrument, may be amended or abrogated, and as to the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;

M. the terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived;

N. the exercise of all or any combination of powers herein granted; and

O. all such acts and things as may be necessary or convenient or desirable in order to secure the bonds of the governing body or, in its discretion, tend to make the bonds more marketable, notwithstanding that such covenant, act or thing of like or different character may not be enumerated herein, it being the intention hereof to give a municipality power to do all things in the issuance of bonds and for their security except as herein specifically limited.

**History:** 1953 Comp., § 6-9-20, enacted by Laws 1959, ch. 300, § 20.

### **5-5-21. Remedies of bondholders.**

Subject to any contractual limitations binding upon the holders of any issue or series of bonds, or trustee therefor, including but not limited to the restriction of the exercise of any remedy to a specified proportion, percentage or number of such holders, any holder of bonds or trustee therefor, shall have the right and power, for the equal benefit and protection of all holders of bonds similarly situated:

A. by mandamus or other suit, action or proceeding at law or in equity to enforce his rights against the municipality and its governing body and any of its officers, agents and employees and to require and compel the municipality or its governing body or any such officers, agents or employees to perform and carry out its and their duties, obligations or other commitments under this act [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978] and its and their covenants and agreements with the bondholders;

B. by action or suit in equity to require the municipality and its governing body to account as if they were the trustee of an express trust;

C. by action or suit in equity to have appointed a receiver, which receiver may enter and take possession of any project revenues from which are pledged for the payment of the bonds, prescribe sufficient tolls, fees, rates, rentals, charges and excise taxes or quasi-excise taxes, and collect, receive and apply all revenues or other moneys pledged for the payment of the bonds in the same manner as the municipality itself might do;

D. by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders; and

E. bring suit upon the bonds.

No right or remedy conferred by this act upon any holder of bonds or any trustee therefor is intended to be exclusive of other right or remedy but each such right or remedy is cumulative and in addition to every other right or remedy and may be exercised without exhausting and without regard to any other remedy conferred by this act or by any other law. The failure of any bondholders so to proceed as herein provided shall not relieve the municipality, its governing body or any of its officers, agents and employees of any liability for failure to perform or carry out any duty, obligation or other commitment.

**History:** 1953 Comp., § 6-9-21, enacted by Laws 1959, ch. 300, § 21.

### **5-5-22. Publication of authorizing proceedings; effect; right to contest legality; time limitation.**

The governing body may provide for the publication once in a newspaper of general circulation in the municipality of any proceedings adopted by the governing body ordering the issuance of any bonds. For a period of thirty days after the date of such publication, any person in interest shall have the right to contest the legality of any bond which may be authorized thereby (except for any bond delivered for value, containing a recital therein that it is issued under authority of this act [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978] and thus being incontestable for any cause whatsoever, as herein provided), and of the provisions made for the security and payment of any such bonds and of any other provisions in such proceedings; and after the expiration of such thirty-day period no one shall have any cause of action to contest the regularity, formality or legality thereof for any cause whatsoever.

**History:** 1953 Comp., § 6-9-22, enacted by Laws 1959, ch. 300, § 22.

### **5-5-23. Revenue bond charges.**

Whenever revenue bonds are issued hereunder, it shall be the duty of the governing body to impose, in connection with the revenues and proceeds pledged for their payment, tolls, rates, charges, fees, license taxes, other excise taxes or quasi-excise taxes fully sufficient to pay the principal of an interest on the bonds, and to carry out all commitments made in the proceedings authorizing their issuance.

**History:** 1953 Comp., § 6-9-23, enacted by Laws 1959, ch. 300, § 23.

### **5-5-24. Pledging of occupation taxes.**

Occupation taxes authorized by Section 3-38-3 NMSA 1978 may be pledged for the retirement of revenue bonds issued pursuant to the Joint City-County Building Law [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978].

**History:** 1953 Comp., § 6-9-23.1, enacted by Laws 1965, ch. 90, § 1.

**Effective dates.** - Laws 1965, ch. 90, § 2, makes the act effective on July 1, 1965.

### **5-5-25. Exemption from taxation.**

Bonds issued by any municipality pursuant hereto and the income therefrom shall at all times be free from taxation by the state of New Mexico and any subdivision thereof, except for any estate, inheritance and transfer taxes.

**History:** 1953 Comp., § 6-9-24, enacted by Laws 1959, ch. 300, § 24.

### **5-5-26. Sufficiency of act.**

This act [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978], without reference to other statutes of the state except as herein otherwise specifically provided or necessarily implied, shall constitute full authority for the acquisition, improvement, operation and maintenance of any project and the borrowing of money and the authorization and issuance of bonds hereunder. No other act or law with regard to said purposes that provides for an election, requires an approval or in any way impedes or restricts the carrying out of the acts herein authorized to be done, shall be construed as applying to any proceedings taken hereunder or acts done pursuant hereto, it being intended that this act shall provide a separate method of accomplishing its objectives and not an exclusive one; and this act shall not be construed as repealing, amending or changing any such other act or law.

**History:** 1953 Comp., § 6-9-25, enacted by Laws 1959, ch. 300, § 25.

### **5-5-27. Liberal construction.**

This act [5-5-1 to 5-5-23, 5-5-25 to 5-5-27 NMSA 1978] being necessary to secure the public health, safety, convenience and welfare, it shall be liberally construed to effect its purposes.

**History:** 1953 Comp., § 6-9-26, enacted by Laws 1959, ch. 300, § 26.

**Emergency clauses.** - Laws 1959, ch. 300, § 28, makes the act effective immediately. Approved April 2, 1959.

**Severability clauses.** - Laws 1959, ch. 300, § 27, provides for the severability of the act if any part or application thereof is held invalid.

# ARTICLE 6

## DANCES

### 5-6-1. [Application for license; duty of magistrate or judge of probate.]

It shall be the duty of every person who shall give a ball or fandago [fandango], to apply to some justice of the peace [magistrate] or judge of probate for license, who are hereby required to grant the same; but if, in the judgment of the justice of the peace [magistrate], or judge of probate, the person soliciting such license is not a competent person, it shall be his duty to so state to the applicant, in order that he may present some person able to act as an officer of police during said ball or fandago [fandango], to whom he will administer an oath that he will faithfully proceed as a police officer, with the power of a sheriff, in keeping good order during said ball or fandago [fandango].

**History:** Laws 1861, p. 30, § 1; C.L. 1865, ch. 12, § 6; Code 1915, § 3314; C.S. 1929, § 81-302; 1941 Comp., § 62-501; 1953 Comp., § 60-5-1.

**Jurisdiction, etc., of justices of the peace transferred.** - The office of justice of the peace has been abolished, and the jurisdiction, powers and duties have been transferred to the magistrate court. See 35-1-38 NMSA 1978.

**Generally.** - A justice of the peace (now magistrate) may issue a license to hold a ball or dance for profit under this section which, although unrepealed, was not carried forward in Comp. Laws 1897. 1914 Op. Att'y Gen. 221; 1915-16 Op. Att'y Gen. 199.

**Appointment of officer.** - The justice of the peace (now magistrate) appoints the officer to be present at dances on recommendation of the party who secures the license for it, although the mayor and trustees of municipality have the right to render police protection. 1931-32 Op. Att'y Gen. 75.

**Payment of fees.** - A license fee of \$10.00 is payable for each day a dance is given outside of a town, city or village and attendance of police officer is required. 1931-32 Op. Att'y Gen. 147.

No fee is payable to the justice of the peace (now magistrate) under the present act for issuance of license to give a dance, but the applicant must pay for the special deputy to police the dance since no provision is made in the law for paying such officer. 1947-48 Op. Att'y Gen. No. 5006.

**Charges permitted.** - Justice of the peace (now magistrate) may not make any charges for the issuance of a license to a person who desires to give a ball, but may charge 25 cents for drawing necessary affidavit, or 15 cents for swearing a person to such affidavit. 1915-16 Op. Att'y Gen. 287.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 4 Am. Jur. 2d Amusements and Exhibitions §§ 24, 29.

Liability of dance hall proprietor or operator for injury to patron, 38 A.L.R.3d 419.

Topless or bottomless dancing as an offense, 49 A.L.R.3d 1084.

### **5-6-2. [Violation of preceding section; penalty.]**

That any person who shall violate the provisions of the foregoing section [5-6-1 NMSA 1978] shall be considered as a violator of the law, and tried in a summary manner by any justice of the peace [magistrate] or judge of probate, and on being found guilty he shall be fined in any sum not exceeding ten dollars.

**History:** Laws 1861, p. 30, § 2; C.L. 1865, ch. 12, § 7; Code 1915, § 3315; C.S. 1929, § 81-303; 1941 Comp., § 62-502; 1953 Comp., § 60-5-2.

**Compiler's note.** - A clause reading "said fine to be applied to the use of the county in which the offense shall be committed" was omitted by the compilers in the 1915 Code. New Mexico Const., art. XII, § 4, reads in part: "All forfeitures, unless otherwise provided by law, and all fines collected under general laws ...shall constitute the current school fund of the state."

**Jurisdiction, etc., of justices of the peace transferred.** - The office of justice of the peace has been abolished, and the jurisdiction, powers and duties have been transferred to the magistrate court. See 35-1-38 NMSA 1978.

### **5-6-3. [Oath to observe order; powers; confinement of arrested persons.]**

Any and every person who receives a license to give a ball, dance or fandango, shall at the time of taking out such license, be sworn to observe good order and enforce this law [5-6-3, 5-6-4 NMSA 1978] at and during such ball, dance or fandango [fandango] on and about his premises, [and] during such time such person shall have and exercise all the powers of a sheriff in maintaining good order on and about his premises, and if the officer who issued such license does not believe the applicant to be a proper person to preserve good order, then such officer shall refuse to grant such license until such applicant shall present a proper person who shall be sworn as above mentioned, and have the power and duties as above mentioned, and persons arrested by the sworn person mentioned in this section may be confined for the time being in any house or place as well as the jail, or in any secure manner that is not inhuman.

**History:** Laws 1869, ch. 32, § 14; C.L. 1884, § 878; C.L. 1897, § 1303; Code 1915, § 3316; C.S. 1929, § 81-304; 1941 Comp., § 62-503; 1953 Comp., § 60-5-3.

**Compiler's note.** - The words "enforce this law" referring to 5-6-3, 5-6-4 NMSA 1978, also referred to Laws 1869, ch. 32, §§ 1 to 13, which related to the carrying and use of deadly weapons. These provisions were superseded by 40-17-1, 1953 Comp., et seq., which was then repealed by Laws 1963, ch. 303, constituting a major portion of the present weapons law, compiled as 30-7-1 to 30-7-8 NMSA 1978.

**Right to render police protection.** - Mayor and trustees of municipality have the right to render police protection, although justice of the peace (now magistrate) appoints officer to be present at dances. 1931-32 Op. Att'y Gen. 75.

#### **5-6-4. [Giving ball without being sworn; penalty; exception where peace officer attends.]**

If any person shall give a ball, dance or fandago [fandango], where a license is required, without first being himself sworn, or having some other person sworn to preserve good order and enforce the provisions of the preceding section [5-6-3 NMSA 1978], he shall be fined in the sum of twenty-five dollars, to be collected before any justice of the peace [magistrate] in the county: provided, that if the applicant secure the attendance at his ball, dance or fandango, of a sheriff or his deputy or of a constable of the county, to preserve good order and enforce said sections, then he shall not be fined for not being sworn, nor shall the officer issuing the license in such case require him to be sworn, nor to present a person to be sworn in his or her place.

**History:** Laws 1869, ch. 32, § 15; C.L. 1884, § 879; C.L. 1897, § 1304; Code 1915, § 3317; C.S. 1929, § 81-305; 1941 Comp., § 62-504; 1953 Comp., § 60-5-4.

**Compiler's note.** - The compilers of the 1915 Code substituted "preceding section" and "said sections" for "this act" and "this law," respectively. "This act" or "this law" would refer, in addition to 5-6-3 NMSA 1978, to Laws 1869, ch. 32, §§ 1 to 13. See compiler's note to 5-6-3 NMSA 1978.

The compilers of the 1915 Code also deleted a provision that one-half of the fine was to go to the county and one-half to the person or attorney securing the conviction, apparently because of N.M. Const., art. XII, § 4, which provides that fines and forfeitures collected should constitute the current school fund.

#### **5-6-5. Fandango license; exemption.**

Sections 5-6-1 through 5-6-4 NMSA 1978, do not apply to any person, firm or corporation licensed as provided by law by the state, a county or municipality, to conduct the business of operating a dance hall, nor to any privately sponsored dance or party that is not open to the general public.

**History:** 1953 Comp., § 60-5-5, enacted by Laws 1963, ch. 142, § 1.

# ARTICLE 7

## FIRE DISTRICT BONDS

### 5-7-1. Short title.

This act [5-7-1 to 5-7-7 NMSA 1978] may be cited as the "Fire District Bond Act."

**History:** Laws 1983, ch. 162, § 1.

**Effective dates.** - Laws 1983, ch. 162, contains no effective date provision, but was enacted at the session which adjourned on March 19, 1983. See N.M. Const., art. IV, § 23.

### 5-7-2. Definitions.

As used in the Fire District Bond Act [5-7-1 to 5-7-7 NMSA 1978]:

- A. "fire district bonds" means the bonds authorized in the Fire District Bond Act;
- B. "governing body" means the board of county commissioners of a county or the city council, city commission or board of trustees of a municipality;
- C. "pledged revenues" means the revenues, net income or net revenues authorized to be pledged to the payment of particular bonds as specifically provided in Section 3 [5-7-3 NMSA 1978] of the Fire District Bond Act; and
- D. "project revenues" means the net revenues of the fire district as well as revenues received by the fire district from the fire protection fund as provided in Sections 59-15-1 through 59-15-18 NMSA 1978, which may be pledged to fire district bonds pursuant to Subsection B of Section 3 of the Fire District Bond Act.

**History:** Laws 1983, ch. 162, § 2.

**Effective dates.** - Laws 1983, ch. 162, contains no effective date provision, but was enacted at the session which adjourned on March 19, 1983. See N.M. Const., art. IV, § 23.

**Compiler's note.** - Sections 59-15-1 through 59-15-18 NMSA 1978, referred to in Subsection D, and relating to the fire protection fund, were repealed by Laws 1984, ch. 127, § 997. For present similar provisions, see 59A-53-1 through 59A-53-17 NMSA 1978.

### 5-7-3. Fire district bonds; authority to issue; pledge of revenues; limitation on time of issuance.



A. In addition to any other law authorizing a county or municipality to issue revenue bonds, a county or municipality may issue fire district bonds pursuant to the Fire District Bond Act [5-7-1 to 5-7-7 NMSA 1978] for the purposes specified in this section.

B. Fire district bonds may be issued for acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping and rehabilitating any fire district project, including, where applicable, purchasing, otherwise acquiring or improving the ground therefor, or for any combination of the foregoing purposes. The county or municipality may pledge irrevocably any or all of the project revenues provided for the operation of the fire district project for which the particular bonds are issued to the payment of the interest on and principal of such bonds. The net revenues of any fire district project shall not be pledged to the bonds issued for any fire district project which clearly is unrelated in its purpose; but nothing in this section shall prevent the pledge to any of such bonds of any such revenues received from any existing, future or disconnected facilities and equipment which are related to and which may constitute a part of the particular fire district project. Any general determination by the governing body of the county or municipality that any facilities or equipment are reasonably related to and shall constitute a part of a specified fire district project shall be conclusive if set forth in the proceedings authorizing such fire district bonds.

**History:** Laws 1983, ch. 162, § 3.

**Effective dates.** - Laws 1983, ch. 162, contains no effective date provision, but was enacted at the session which adjourned on March 19, 1983. See N.M. Const., art. IV, § 23.

#### **5-7-4. Use of proceeds of bond issue.**

It is unlawful to divert, use or expend any money received from the issuance of fire district bonds for any purpose other than the purposes for which the bonds were issued.

**History:** Laws 1983, ch. 162, § 4.

**Effective dates.** - Laws 1983, ch. 162, contains no effective date provision, but was enacted at the session which adjourned on March 19, 1983. See N.M. Const., art. IV, § 23.

#### **5-7-5. Fire district bonds; terms.**

County or municipal fire district bonds:

A. shall bear interest at a coupon rate or coupon rates not exceeding the maximum coupon rate which is permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978]; provided that interest shall be payable annually or semiannually and may or may not be evidenced by coupons; and provided further that the first interest payment date may be for interest accruing for any period not exceeding one year;

B. may be subject to a prior redemption at the county's or municipality's option at such time or times and upon such terms and conditions, with or without the payment of such premium or premiums, as may be provided by ordinance;

C. may mature at any time or times not exceeding twenty years after the date of issuance;

D. may be serial in form and maturity or may consist of one bond payable at one time or in installments;

E. shall be sold for cash at, above or below par and at a price which results in a net effective interest rate which does not exceed the maximum permitted by the Public Securities Act; and

F. may be sold at public or private sale.

**History:** Laws 1983, ch. 162, § 5.

**Effective dates.** - Laws 1983, ch. 162, contains no effective date provision, but was enacted at the session which adjourned on March 19, 1983. See N.M. Const., art. IV, § 23.

### **5-7-6. Ordinance authorizing fire district bonds; two-thirds majority required.**

A. At a regular or special meeting called for the purpose of issuing fire district bonds as authorized in Section 3 [5-7-3 NMSA 1978] of the Fire District Bond Act, the governing body may adopt an ordinance that:

(1) declares the necessity for issuing fire district bonds;

(2) authorizes the issuance of fire district bonds by an affirmative vote of two-thirds of all the members of the governing body; and

(3) designates the source of the pledged revenues.

**History:** Laws 1983, ch. 162, § 6.

**Effective dates.** - Laws 1983, ch. 162, contains no effective date provision, but was enacted at the session which adjourned on March 19, 1983. See N.M. Const., art. IV, § 23.

**Compiler's note.** - This section was enacted without a Subsection B.

## **5-7-7. Fire district bonds not general county or municipal obligations; authentication.**

A. Fire district bonds or refunding bonds issued as authorized in the Fire District Bond Act [5-7-1 to 5-7-7 NMSA 1978] are:

(1) not general obligations of the county or municipality; and

(2) collectible only from the proper pledged revenues, and each bond shall state that it is payable solely from the proper pledged revenues and that the bondholders may not look to any other county or municipal fund for the payment of the interest and principal of the bonds.

B. The bonds and coupons shall be signed and sealed as provided by the ordinance issuing the same, and the Uniform Facsimile Signature of Public Officials Act [6-9-1 to 6-9-6 NMSA 1978] shall be applicable.

**History:** Laws 1983, ch. 162, § 7.

**Effective dates.** - Laws 1983, ch. 162, contains no effective date provision, but was enacted at the session which adjourned on March 19, 1983. See N.M. Const., art. IV, § 23.