

## Opinion No. 49-5197

February 17, 1949

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** Senator Claude E. Gamble Nineteenth Legislature State Capitol Santa Fe, New Mexico

{\*18} This office is in receipt of your communication of February 14, 1949, in which you enclosed copy of printed Senate Bill No. 94, and requested the opinion of this office upon the question of whether or not the bond issue proposed in such bill meets constitutional requirements.

As you mentioned in your letter, a similar bill was passed by the last session of the Legislature and became Chapter 152 of the New Mexico Session Laws of 1947. This law thereafter became the subject matter of an opinion of this office and the constitutionality thereof was questioned upon two grounds. See Attorney General's Opinion No. 5170, Report of the Attorney General, January 1, 1947 to November 1, 1948, page 163. The constitutionality in that opinion was questioned upon the ground that the bill on its face applied only to Curry County and was, therefore, special or local legislation, contravening the provisions of Article 4, Section 24 of the New Mexico Constitution and upon the further ground that it constituted a regulation of county affairs.

I am of the opinion that Senate Bill No. 94 as now drawn satisfactorily meets the objections set forth in our opinion to the previous bill.

As to the constitutionality on other grounds, your attention is specifically called to the provisions of Article 9, Section 10 of the Constitution, which provides as follows:

"No county shall borrow money except for the purpose of erecting necessary public buildings or constructing or repairing public roads and bridges, \* \* \*"

You will note that the bill as now drawn provides for the issuance of bonds "for such county fair purposes" and we believe that such language is considerably broader and takes in considerably {\*19} more territory than the constitutional restrictions above quoted would permit. I would suggest that the words "for such county fair purposes" in lines 8 and 9 of page 2 of the printed bill be stricken and that the following words be substituted: "for the construction of buildings thereon, which are declared to be necessary public buildings."

In other words, the expenditure of the proceeds of the bonds should be specifically limited to the construction of buildings, and I believe that a legislative declaration of the necessity of such public buildings would be advisable.

While such legislative declaration of necessity is not necessarily binding upon the courts, it is persuasive and, unless palpably erroneous, would probably be sustained by the courts.

I also notice that in line 5 of page 1 of the printed bill the word "lease" is used, indicating that the fairgrounds could be acquired by the board of county commissioners on lease.

I seriously question the validity of the expenditure of public funds, particularly the proceeds of bond issues, for the improvement of leased property, and in order to cure any possible question on this point, I would suggest that the word "lease" be stricken from line 5 of page 1 of the printed bill and that the following words be inserted after the comma, following the word "county" in line 5 of page 2 of the printed bill, to-wit: "and title in fee simple thereto is vested in the county."

With the above suggested amendments of the bill, I at this time see no constitutional objections. However, you understand that final approval of the bonds would be contingent upon consideration of all the steps taken subsequent to the passage of the act in connection with the acquisition of the property and issuance and sale of the bonds.