

Opinion No. 49-5252

October 25, 1949

BY: JOE L. MARTINEZ, Attorney General

TO: Hon. Paul Tackett District Attorney Second Judicial District Second Floor Court House Albuquerque, New Mexico

{*94} I have your letter of September 14, 1949, wherein you ask whether or not a county may enter into agreements with the Federal Government for the planning, construction and operation of housing projects to house families of the lower income groups. You specifically ask whether this authority is to be found in the Municipal Housing Act, Sections 14-2601 through 14-2626 of the 1941 Compilation.

This latter inquiry must be answered in the negative. The Municipal Housing Act is just what its name indicates. The powers and authority therein vested relate primarily to municipalities. Under the provisions of Section 14-2622 and 14-2623, counties are authorized to cooperate with municipalities in the construction of housing projects, but the act is only applicable where the initiative has been taken by the municipality and the county is merely cooperating in order to insure the success of the municipal project. It would appear, however, that counties could undertake such a project independently of the municipalities within the boundaries under the general powers vested in them by Section 15-3401 of the 1941 Compilation. The material part of this section reads as follows:

"Each organized county in this state shall be a body corporate and politic, and as such shall be empowered for the following purposes: * * * second. To purchase and hold real and personal property for the use of the county. * * * Fourth. To make all contracts and do all other acts in reference to the property and concerns necessary to the exercise of its corporate or administrative powers. * * *"

This section was construed by the Supreme Court of our State in *Agua Pura Company v. Mayor*, 10 N.M. 6, 60 P. 208, 50 L.R.A. 224. There the Court observed:

"These clauses seem to mean something more than the ordinary powers appertaining to counties. They confer express authority to do the acts in the interest of the county, and to make contracts in reference to the concerns necessary to the exercise of this authority, when not otherwise provided by law. We do not understand that the grant of powers to counties or other municipal corporations must contain a specification of each particular act to be done, but it is sufficient if the words used be sufficiently comprehensive to include the proposed acts. An express authority may be general as well as particular. It is clear that the powers of the counties, by the foregoing act, are recognized as being not only 'corporate' but 'administrative.'"

In the above quoted case, the Supreme Court held that under this section the county could provide an adequate water supply for municipal and domestic purposes in an unincorporated community within the county.

In Opinion No. 4438, dated January 14, 1944, it was held by this office that a county might legally enter into a contract with the U.S. Government for the purpose of purchasing hospital equipment and supplies on the grounds that such would safeguard the health of the inhabitants {*95} of the county and perhaps also take care of indigent patients.

In Opinion No. 5007, dated April 8, 1947, it was held by this office that a county through its county commissioners might own, operate, maintain and improve a public airport and spend funds in connection therewith, and in Opinion No. 5048, dated July 1, 1947, it was held that the county might accept Federal aid and enter into agreements in regard thereto concerning the same county airport.

From the above cited case and opinions, it may be seen that the counties of this state are vested with broad powers regarding authority to do acts in the interests of the county. It is my opinion that the authority of a county extends to the construction of housing units for low income groups, provided, however, that nothing in this opinion should be construed as holding that counties are authorized to become indebted by the issuance of bonds or otherwise for this purpose, and should be limited to approval only when funds have been budgeted for that purpose.