Opinion No. 50-5250

October 21, 1950

BY: JOE L. MARTINEZ, Attorney General

TO: H. R. Rodgers State Treasurer Santa Fe, New Mexico

*{*90}* This is in reply to your letter dated October 3, 1949, in which you request an opinion as to whether or not the two and one half million institutional bond issue approved by the voters in New Mexico at the last general election would be a legal investment by the State Treasurer to purchase these bonds with moneys belonging to the permanent school fund.

It is my opinion that this would be a legal investment for such fund.

According to the official records of the Secretary of State's Office, the two and one half million institutional bond issue carried by a substantial majority -- 26,110 for the bonds and 15,838 against the bonds, or a majority of 10,272 votes. There is a question raised as to whether or not the Secretary of State complied with the Constitution as to the publication of Chapter 215 of the Laws of 1947, the law creating the debt, before the election, as provided by Art. 9, Sec. 8 of the New Mexico Constitution, which reads as follows:

"No debt other than those specified in the preceding section shall be contracted by or on behalf of this state, unless authorized by law for some specified work or object; which law shall provide for an annual tax levy sufficient to pay the interest and to provide a sinking fund to pay the principal of such debt within fifty years from the time of the contracting thereof. No such law shall take *{*91}* effect until it shall have been submitted to the qualified electors of the state and have received a majority of all the votes cast thereon at a general election; such law shall be published in full in at least one newspaper in each county in the state, if one be published therein, once each week, for four successive weeks next preceding such election. No debt shall be so created if the total indebtedness of the state, exclusive of the debts of the territory, and the several counties, thereof, assumed by the state, would thereby be made to exceed one per centum of the assessed valuation of all the property subject to taxation in the state as shown by the preceding general assessment."

I have checked the records in the Secretary of State's Office and find that the law was published in some counties four times, in others three times and in others only twice; in Catron County, which had no newspaper, no publication was made, but this county received notice by newspapers from other counties that had a paper of general circulation in that county, and a substantial publication was made to comply with the hereinabove mentioned constitutional requirements. Most of the cases in other states where this question has been raised have held that a substantial compliance with the provisions as to publications is sufficient. In the case of State ex rel Hay vs. Alderson,

Secretary of State, reported in 142P. 210, it was alleged that only one publication was made prior to the election in the counties of the State of Minnesota and the statute was attacked as not being valid. The Court, in upholding the validity of the statute, said:

"If publication of a proposed amendment was one of the successive steps in its adoption, or if universal notice of the proposed amendment throughout the state before election was the sine qua non to the valid adoption of such amendment, then some foundation would be laid for argument that the slightest defect in publication would defeat the effort to amend; but neither of these premises can be insisted upon. The only purpose of publication is to give notice to the electors, and the framers of our Constitution in preparing the draft for submission, and the people in adopting it with a full realization of the fact that they were prescribing only general rules and remitting matters of detail to the Legislature or to the discretion of the proper officer, wisely left a margin to cover the frailties of human nature as well as defective machinery for giving notice. Nothing whatever is said as to the number of issues of the newspapers in which the proposed amendment must appear; nothing as to the character of the paper, whether of general or extremely limited circulation, or whether a monthly, weekly, or daily' and finally, no provision whatever was made for giving any notice at all to the people of an entire county, if perchance, there should be such county, in which a newspaper was not published. Since notice was the sole object of publication, all these matters of detail were wisely left for control by legislation or official discretion.

The proper proposal of the amendment by the Legislature and the will of the people expressed at the polls in favor of such amendment are clearly emphasized as the factors of paramount importance in effecting a change of our Constitution. Constitutional Prohibitory Amendment, 24 Kan. 700. Whatever may be said of the rigidity with which *{*92}* the rules of laws must be drawn when ever either of these paramount factors is in issue, we are clearly of the opinion that any question which may arise upon other features of the amending process is referable to the rule of substantial compliance, even though the provision of the Constitution invoked is mandatory."

The same rule of substantial compliance was followed in the following cases: Denton et al vs. Pulaski County et al, reported in 185 S.W. 481, and Brockeburst vs. State, reported in 111 S.W.2d 527.

There is no question according to the records in the Secretary of State's office, that a substantial compliance was made in the publishing of this proposed two and one-half million dollar bond issue and the bonds when properly issued will be valid obligations of the State of New Mexico.

Trusting this fully answers your inquiry, I am