

## Opinion No. 51-5360

April 25, 1951

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

**TO:** Mr. L. F. Dryden Village Clerk Ruidoso, New Mexico

{\*38} I have received your request for an opinion as to whether § 7-622 of New Mexico 1941 Compilation applies to revenue bonds as well as general obligation bonds.

As I understand the facts from the correspondence, on November 23, 1948, the Village of Ruidoso submitted to its citizens the question of whether the village should purchase or construct a water works of its own. Such election was held in compliance with § 14-3529 of New Mexico 1941 Compilation, as amended, and the result of the vote was in the affirmative, permitting the purchase or construction of the water works. Due to difficulty in obtaining engineering reports the matter was held up and now the {\*39} village desires to proceed to the issuance of revenue bonds. I understand that a question has been raised as to the legality of the bonds because of § 7-622 New Mexico 1941 Compilation, which states as follows:

"No bonds shall be issued or sold by any school district, county or municipality, after the expiration of two years from the date of initiation of proceedings for the election authorizing such issue, \* \* \*"

The above section was passed in 1933. However, the procedure for the issuance of revenue bonds in the matter before us was enacted by Chapter 82 of the Session Laws of 1943, which materially changed the original procedure under our law.

The pertinent statutory provisions governing bond issues for purchase or construction of a utility is covered by Chapter 82 of the Session Laws of 1943 and as amended.

Section 14-3529 of New Mexico 1941 Compilation, which is § 1 of Chapter 82 of the Session Laws of 1943 provides as follows:

"Hereafter no municipality in this state shall issue revenue bonds under the provisions of § 14-3507 to § 14-3513, both inclusive, of the 1941 Compilation, or under any other law providing for the issuance of bonds or debentures payable out of the net income derived from the operation of any municipally owned utility, until the question of the purchase or construction of such utility shall, at a regular election of municipal officers, or at a special election, be submitted to a vote of the qualified electors of the municipality, \* \* \*"

Section 14-3530 states as follows:

"In the event that a canvass of the vote shall show that the voters have voted in favor of purchase or construction of any utility, then the governing body shall be and is hereby

authorized to proceed with the issuance of such securities as may be required to finance the same under the provisions of any law now or hereafter existing, but the price to be paid for purchase, or construction of any such utility shall be subject to the approval or disapproval of the New Mexico Public Service Commission, \* \* \*

Section 14-3538, which deals with issuing revenue bonds, states as follows:

"Boards of trustees of towns and villages issuing revenue bonds under the provisions of this act may authorize the issuance thereof by ordinance, adopted by the affirmative vote of three-fourths of the members of the entire governing bodies, \* \* \* Provided, that in the event a majority of the members of the entire governing body shall vote in the affirmative but a three-fourths majority is not obtainable, such ordinance shall thereupon be declared adopted but it shall not become effective and no bonds shall be issued thereunder until the question of issuing bonds under such ordinance shall have been approved by the property taxpaying electorate at a regular election of municipal officers, or at a special election called for that purpose. \* \* \*"

Section 14-3539 states as follows:

"It is hereby declared that revenue bonds, issued under the provisions of this act, shall not be considered or held to be general obligations of the municipalities issuing them, \* \* \*"

In reviewing various statutory provisions pertaining to issuance of revenue bonds for utilities, it is to be noted that § 14-3508 and § 14-3510 also provide that:

"\* \* \* by ordinance duly adopted, incorporated cities, towns or villages are hereby authorized to make and issue revenue bonds, \* \* \*"

{\*40} In view of the above statutes, it is my opinion that § 7-622 is not applicable to the matter before us and if the provisions of § 14-3538 are complied with, the revenue bonds would be valid.

Since there are no other issues before us we will not pass upon them at this time, but you should be advised that § 14-3530 and § 14-3509 should be considered by you in issuing said bonds.