Opinion No. 51-5450

October 24, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. W. R. Hollis City Commissioner City of Hobbs Hobbs, New Mexico

*{*157}* This is in reply to your request of October 11, 1951, asking for an opinion interpreting Article 9, Section 13 of the Constitution, insofar as it pertains to the contracting of debts by a city for the construction or purchase of a water or sewer system. Article 9, Section 13 in its entirety reads as follows:

"No county, city, town or village 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 county, city, town or village, as shown by the last preceding assessment for state or county taxes; and all bonds or obligations issued in excess of such amount shall be void; provided, that any city, town or village may contract debts in excess of such limitation for the construction or purchase of a system for supplying water, or of a sewer system, for such city, town or village."

You mention that the City of Hobbs has voted to issue $ 75,000 in general obligation jail bonds, and at the time that this issue was voted, there was an outstanding indebtedness in water and sewer bonds exceeding 4% of the value of taxable property within the city. You ask the opinion of this office as to the validity of the $ 75,000 jail bond issue.

It is my opinion that this bond issue of $ 75,000 is valid and permissible under Article 9, Section 13 of our Constitution. As you are well aware, this office has rendered conflicting opinions on this very subject in the past 14 years. Attorney General Opinion No. 1891, issued in 1938, stated that indebtedness for water and sewer systems is entirely outside of the 4% limitation and should not be considered as a part of the bonded indebtedness of the municipality. Attorney General Opinion No. 4821-A, issued in 1945, took the opposite view. This opinion stated, in part, that:

"A city may exceed the 4% limitation provided by Article 9, Section 13 and the 12-mill limitation provided by Section 12 of Article 9 only for the purpose of issuing sewer or water bonds and it may not exclude the amount of the previously issued sewer and water bonds in calculating the limitation when bonds for other purposes are issued."

Attorney General Opinion No. 4847, issued in 1946, followed No. 4821-A, and both of these latter opinions emphasized that the prohibition in Section 13 was against **becoming indebted** in excess of 4%.

According to the reasoning of these two latter opinions, the following results would obtain in the following hypothetical cases:

1. City A has an outstanding bonded indebtedness of 4% in hospital and jail bonds. It wishes now to issue sewer and water bonds which would bring the total indebtedness up to 7% (or even 9%) of the value of the taxable property in the city. This may clearly be done under Article 9, Section 13 because that section specifically permits the contracting of debts in excess of 4% for the construction of sewer and water works.

2. City B has an outstanding bonded indebtedness of 3% in water and sewer bonds. City B now wishes to issue hospital bonds which would bring the total indebtedness to 5% of the value of the city's taxable property. *{*158}* The hospital bond issue would be illegal, according to the reasoning of these opinions, because the debt contracted raising the figure above 4% was not for sewer or water system purposes.

From the reasoning of these opinions, it may be seen that the legality of an issue might well depend upon which bond issue came first, the sewer and water issue or the issue for other municipal purposes.

I find myself in agreement with Attorney General Opinion No. 1891, and it is likewise my opinion that indebtedness for water and sewer systems is entirely outside of the 4% limitation and should not be considered as a part of the bonded indebtedness of the municipality. In reaching his decision, the author of Attorney General Opinion No. 1891 relied upon the language found in the case of Lanigan v. the Town of Gallup, 17 N.M. 627, where the Supreme Court considered and construed both Sections 12 and 13 of Article 9. The writer of Attorney General Opinion No. 4821-A also makes reference to this decision but states that the Court did not have before it the precise type of question which confronts us now, and therefore cannot be said to have ruled on such a question.

The Court in the Lanigan case was considering, in part, whether the limitation imposed by Section 12, Article 9 applied to the proviso of Section 13 which states that a city may contract debts in excess of the 4% limitation for the purpose of constructing sewer and water systems. It is true that this is not the same question, but in my opinion the language contained in that decision supports Attorney General Opinion No. 1891 and the view I am taking here. The Court said, beginning on page 637 of that opinion:

"The States, in the arid region, almost without exception, have no constitutional limitation upon the amount of indebtedness which may be incurred for this purpose, and the framers of the Constitution of New Mexico, familiar as they were with the conditions in the State, and the necessity which existed for an unlimited right to issue bonds and incur indebtedness for the purpose of providing a water supply, attempted, by the proviso to Section 13, **to exempt the amount of such indebtedness** from the restrictions and limitations which they had imposed upon indebtedness for other purposes. Likewise they realized that for the health of the community, it was necessary that the sewerage should be disposed of, and they included in the same category with a water supply, sewer systems. * * * * The proviso, 'any city, town or village may contract debts in excess of such limitation for the construction or purchase of a system for supplying water or of a sewer system for such city, town or village' **clearly excepts indebtedness incurred for supplying water** from the general provision of Section 13,

which limits the amount to which a city, town or village may become indebted to four per centum of the taxable property within such city * * * *." (Emphasis mine.)

It is my opinion that the very language of this decision means that sewer and water system indebtedness, whether contracted before or after other municipal obligations, is exempted and is not to be considered in determining the total municipal debt under Section 13

Apart from the very language of the section itself and the construction which has been given it, what other aids do we have in determining the intended meaning of Article 9, Section 13? It may be conceded here that the language of the section is susceptible of the two interpretations which have been given it previously by conflicting Attorney General Opinions. In such cases of ambiguity the general rule *{*159}* is that the statutory or constitutional provision must be construed with reference to the object intended to be accomplished by it. That 'object intended' is clearly set out in the Lanigan opinion, portions of which I have quoted above, and I submit that no court was ever better able to determine the intent of the framers of the Constitution than was the Supreme Court in 1913. The Court says further on page 638 of this opinion:

"It was thus manifest that it was the intention of the framers of the constitution that no restraints should be laid upon municipalities in their efforts to procure a water supply, by either the purchase or construction of systems for such purpose, or of sewer systems."

It is my opinion that giving to Section 13 the meaning that Attorney General Opinions No. 4821-A and 4847 give it, would be to lay restraint upon municipalities in their efforts to establish water and sewer systems. Such a construction would be tantamount to saying to a municipality that although its debt may be **unlimited** for water and sewer purposes, such debt must necessarily be **limited** if the municipality contemplates contracting indebtedness for other municipal purposes at a later date. It is my belief that the framers of the Constitution mean to impose no such hardship on the municipalities in the enactment of Article 9, Section 13 of the Constitution.

Therefore, for this reason and for the reasons stated previously in this opinion, Attorney General Opinions 4821-A and 4847 are hereby overruled.

I hope that this opinion answers all your questions on this subject and that it has proved helpful.