

Opinion No. 53-5733

April 16, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable Lewis C. Cox State Senator Clovis, New Mexico

{*131} In your letter dated April 13, 1953, you referred to § 14-3705 of the 1941 Compilation, and asked two questions in connection therewith. First, does the one mill levy have to be within the 20 mill levy set by the Constitution, and second, is there any limitation on the amount of indebtedness a city can incur for the purposes of paying such assessments.

Sec. 14-3705 of the 1941 Compilation authorizes municipalities to levy a special tax not to exceed one mill on the dollar for any one year, the proceeds of such tax to be applicable to the payment of the cost of repairs or construction of sidewalks, paving, grading, sewer, gutter or other improvements to abutting property owned by such municipalities, the United States, the State of New Mexico and any county thereof. Such a levy would be in the nature of paying for current expenses and would be required to be within the 20 mill constitutional limitation and also within the 5 mill limitation prescribed by § 76-311 of the 1941 Compilation.

It is doubtful whether the municipality could become indebted and issue bonds based upon and to be paid from the one mill levy without violating the constitutional provisions relative to bonded indebtedness of a municipality which require that no debt be incurred without approval by a vote of the qualified electors in such a municipality. Since the levy is for current expenses, a pledge could only be made of the amount collected under such levy for each year; otherwise § 7-7-6 known as the Bateman Act, would be violated.

A different situation exists as to payment of improvements abutting upon publicly owned property from that of improvements abutting upon private property. There is no question but what bonds could be issued secured by the liens for improvements abutting upon private property, but the constitutional question of becoming indebted and the amount of the indebtedness enters into the picture in connection with bonds based upon indebtedness to be paid from tax levies.

We trust this answers your inquiries.

By: C. C. McCulloh

Assist. Attorney General