

## Opinion No. 53-5782

July 14, 1953

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Honorable Bertrand B. Prince District Attorney First Judicial District County Court House Santa Fe, New Mexico

{\*185} This will acknowledge receipt of your letter of June 6th, wherein you request the opinion of this office as to whether or not a county must have a population of at least 40,000 in order to issue bonds for the purpose of building a county auditorium, and further you wish to know what basis is to be used in determining whether or not the county has the necessary population.

The applicable statute is Section 6-311 of the 1941 Compilation, which provides as follows:

"The boards of county commissioners of the several counties in this state having a population in excess of forty thousand (40,000), are hereby authorized and empowered to issue the bonds of such counties for the purpose of acquiring suitable sites for public auditoriums within their counties, and for the building of such public auditoriums. Such public auditoriums are declared to be necessary public buildings."

{\*186} This section unequivocally and clearly states that only counties having a population in excess of 40,000 are authorized to issue county auditorium bonds.

You will note that the above quoted section uses the term "having" thus indicating that the present population of the county is decisive. This is further indicated by the fact that the law does not require such a population as of the date of the last Federal Census, or some other enumeration.

Other statutes relating to population requirements usually prescribe specific methods of determining population; for example, Section 14-403 of the 1941 Compilation, requires a census to be taken by the sheriff and Sections 14-1001, and 14-1101 of the 1941 Compilation require that the prescribed population be shown by any census which may have been taken. In this connection, municipalities, under the provisions of 14-1836 of the 1941 Compilation, are authorized to take a local census once between the years prescribed for the Federal Census.

Because of the fact that the Legislature did not specify any method for the determination of population and because of the fact that the use of the present tense indicates that the Legislature wished to confer the power to issue such bonds upon any county having the requisite population at the time the bonds are desired to be issued, it is the opinion of this office that Santa Fe County is not bound by the population figures shown in the 1950 Federal Census.

It therefore becomes the duty of the Board of County Commissioners to determine, from any reliable information which may be presented to it, whether or not Santa Fe County at the present time has a population of 40,000 persons, and if the Board determines that the County has the necessary population, then it becomes its duty to proceed with the calling of an election.

By: Walter R. Kegel

Assist. Attorney General