

Opinion No. 53-5805

August 26, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable Thomas P. Foy District Attorney Sixth Judicial District Silver City, New Mexico

Re: Hidalgo County Fair Bonds

OPINION

{*212} This will acknowledge receipt of your letter of August 15, 1953, in which you enclosed for our approval three copies of a transcript of proceedings of a County Fair Bond issued by Hidalgo County. With the exception of one proposition we find that the proceedings were held and the bonds issued in conformity with Chapter 152, Laws of 1923, being Chapter 48, Article 22 of the 1941 Compilation. It is our opinion however that these bonds and the statute under which they were issued are invalid under the provisions of Article 9, Section 10 of the Constitution of the State of New Mexico which reads as follows:

"No county shall borrow money except for the purpose of erecting necessary public buildings or constructing or repairing public roads and bridges, and in such cases only after the proposition to create such debt shall have been submitted to the qualified electors of the county who paid a property tax therein during the preceding year and approved by a majority of those voting thereon. No bonds issued for such purpose shall run for more than fifty years."

Our opinion is based upon several grounds. First, the Notice of Election issued by the County Commissioners, partially in conformity with Section 48-2202 of the 1941 Compilation, proposes the question of "whether or not said Hidalgo County shall become indebted in the total {*213} sum of \$ 15,000.00 for the purpose of erecting buildings, purchasing equipment, maintenance of lands and premises for the holding of a Hidalgo County Fair. * * *" Section 48-2202 provides in part as follows:

"The county commissioners of any county may submit to the voters of their county at any regular election or at any special election, called for that purpose, the question of issuing bonds, proceeds for the sale of which shall be used for the purchase, equipment and maintenance of lands and premises for the holding of county fairs. * * *"

Inasmuch as the County's power is limited, by the Constitution, to borrowing money for the purpose of erecting necessary buildings, it is obvious that the county has no authority to borrow money for the purpose of purchasing equipment or maintaining lands and premises. In **Tom vs. Board of County Commissioners, 43 N.M. 392 92 P. 2d 167**, and in **Board of County Commissioners vs. State, 43 N.M. 409, 94 P. 2d**

515, it was held that the Constitutional authorization to borrow money for the purpose of erecting necessary public buildings did not include authority to borrow money for remodeling such buildings. In **Board of Education of Gallup vs. Robinson, New Mexico Supreme Court No. 5685**, not yet officially reported, it was held that a similar case relating to borrowing of money by school districts prohibits borrowing for improvements of school grounds and modernization and additions to existing school district. In view of the foregoing cases, we feel that it is clear that the Constitution of the State of New Mexico prohibits the borrowing of money for all but the first purpose stated in the Notice of Election.

It is noted that the Resolution of the Board of County Commissioners, subsequent to the election, attempted to limit the use of these funds to the construction of "a Hidalgo County Fair Building." In **Board of Education of Gallup vs. Robinson, supra**, it was held that this does not validate the prior unconstitutional proceedings. Furthermore, Section 48-2202, *supra*, does not authorize the county to use the proceeds from the bond issue for the purpose of erecting buildings. Thus, is presented the anomalous situation of the only constitutionally permissible purpose being unauthorized by statute. Since this provision of the Constitution is not self-executing, no authority exists to contract indebtedness independent of legislative authorization, **Lanigan vs. Gullup 17 N.M. 627, 131 P. 997**.

Another ground for rejecting this bond issue is that the ballot, in conformity with Section 48-2202 of the 1941 Compilation, submitted the following question to the electorate, "Upon the question of issuing Hidalgo County Fair Bonds in the amount of \$ 15,000.00" Your attention is called to the provision of Section 10, Article 9 of the New Mexico Constitution requiring "the proposition to create such debt" to be submitted to the property tax paying electors of the County. It is our opinion that the question so submitted does not adequately submit the actual proposition to the electorate and for that reason also is invalid.

A further reason for the invalidity of these bonds is the portion of Article 9, Section 10 limiting the erection of buildings to "**necessary** public buildings." Chapter 152, Laws 1923 does not recite that such buildings are necessary public buildings, and the absence of such recital would permit the question to be raised at a later date by an interested party.

{*214} For the foregoing reasons it is the opinion of this office that the proposed Hidalgo County Fair Bonds are not a valid investment for the State Treasurer of the State of New Mexico, and we decline to approve the same.

One copy of the transcript is being retained for our files, and the remaining copies are returned herewith.

By: Walter R. Kegel

Assist. Attorney General