

Opinion No. 53-5854

December 1, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable Edwin L. Mechem Governor of New Mexico Santa Fe, New Mexico

{*275} You have referred to this office a copy of your letter to Col. John W. Chapman, Director of Civil Defense, dated November 6, 1953, together with his reply, dated November 13, 1953, and you request our opinion concerning the matters discussed therein relative to the availability of funds and services for use in the event of disaster or serious emergency. You are interested in knowing whether any funds are available which might be used for drought relief; whether the \$ 300,000. appropriation, Ch. 204, L. 1951, is a recurring authorization; and whether or not the authorization of Ch. 204, L. 1951, violates the Constitution.

Art. 5, § 4, of the Constitution, gives you rather broad powers and provides as follows:

"Governor's executive power -- Commander of militia. -- The supreme executive power of the state shall be vested in the governor, who shall take care that the laws be faithfully executed. He shall be commander-in-chief of the military forces of the state, except when they are called into the service of the United States. He shall have power to call out the militia to preserve the public peace, execute the laws, suppress insurrection and repel invasion."

Art. 9, § 7, of the Constitution, provides as follows:

"State indebtedness -- Purposes. -- The state may borrow money not exceeding the sum of two hundred thousand dollars in the aggregate to meet casual deficits or failure in revenue, or for necessary expenses. The state may also contract debts to suppress insurrection and to provide for the public defense."

Col. Chapman expresses doubt that Ch. 204, L. 1951, is constitutional particularly insofar as it authorizes certificates of indebtedness in excess of \$ 200,000. as provided in Art. 9, § 7. However, in the case of State ex rel Charlton vs. French, 44 N.M. 169, 99 P. 2d 715, the Supreme Court had this section of the Constitution under consideration and gave a very liberal interpretation to the section and to the powers of the Governor in connection with his power as commander-in-chief of the militia. In this case, in referring to the powers of the Governor in calling out the militia, the Court used this language:

"He is made the sole judge of the facts that may seem to demand the aid and assistance of the military forces of the State. The presumption, of course, is that he will not exercise such power unless it becomes necessary. To his good judgment and sound discretion, the law has left the final decision as to whether the military arm of the State shall be ordered into active service. If he acts wisely and prudent, well and good.

If he acts hastily or unwisely or imprudently, there is no power in the courts to control or restrain his acts."

Again, in the same opinion, this language appears:

"The power conferred upon the Governor by Sec. 93-116 to organize {*276} the militia and the power conferred on him by Sec. 93-137 to meet emergencies is ample for every situation that may present itself. It gives to the Chief Executive of the State the fullest authority to reorganize and equip the National Guard and to call to his assistance in any contingency that may arise, a force sufficient in numbers and properly equipped, to safeguard the welfare and health of the people and provide for their defense."

In the same opinion, this language appears:

"The issuance of certificates of indebtedness **without limit** is not confined to instances when the militia is called out by the Governor under his constitutional power."

It is apparent from the language of the Supreme Court that the last sentence in Art. 9, § 7, to the effect that the State may also contract debts to suppress insurrection and to provide for the public defense, is authority for issuance of certificates of indebtedness for debts contracted without any limitation dependent only upon the extent and degree of the emergency and the wisdom of the Governor and Legislature in meeting the same. The \$ 200,000. authorized to meet casual deficits or for necessary expenses does not limit in any way the debt contracting power contained in this last sentence as shown by the foregoing Supreme Court decision.

The authorization under Ch. 204, L. 1951, § 66-1812 of the 1941 Compilation, p.s., is for the sum of \$ 300,000. for civil defense and, in our opinion, is in addition to the \$ 200,000. indebtedness that may be paid by casual certificates for casual deficits or for necessary expenses. There may be many necessary expenses which would require this authorized indebtedness under the Constitution which would not be considered debts contracted to suppress insurrection and to provide for the public defense.

Providing for the public defense is a matter which may be given broad interpretation as stated in State vs. French, supra, it may involve preparation and prevention as well as the meeting of actual emergencies.

§ 2, Ch. 189, Laws of 1941, §§ 66-1802 of the 1941 Compilation, p.s., is a declaration by the Legislature that activities of the Civil Defense Department are comprised within the definition of the words "providing for the public defense". These activities are stated to be as follows and are declared to constitute the purposes for which the Civil Defense Agency is organized:

"Because of the existing possibility of the occurrence of disasters of unprecedented size and destructiveness resulting from enemy attack, sabotage or other hostile action, or from fire, flood, earthquake, or other causes, and in order to insure that preparations of

this state will be adequate to deal with such disasters, and generally to provide for the common defense and to protect the peace, health, and safety, and to preserve the lives and property of the people of the state of New Mexico. * * * *."

In view of these purposes declared by the Legislature to be part of the common defense and protection of the health and welfare of the lives and property of the people of this State, the \$ 300,000. appropriation and the authorization for issuance of certificate of indebtedness to provide that amount, appear in § 66-1812, {*277} above mentioned.

It is to be noted that drought relief as such is not specifically mentioned as one of the purposes of the Act for which the funds may be spent, however, similar disastrous results caused by drought could possibly come about as much as the disastrous results from fire, flood or earthquake and viewed in that light, although the cause of the emergency may be spread over a period of months or years, it is felt that the Governor in his discretion could declare that an emergency exists because of drought and spend the funds provided for this purpose, if necessary, the same as for other disasters.

§ 66-603, 1941 Comp., p.s., authorizes the Governor to contract indebtedness and order the issuance of certificates of indebtedness in an amount not exceeding \$ 75,000. if he shall deem it necessary or if it is required to provide funds for payment of any and all expenses and costs incident to or connected with an emergency in connection with which the militia is called into the service of the State. If it appears to the Governor that the costs of financing such an emergency would exceed the sum of \$ 75,000., he shall call a special session of the Legislature for the purpose of authorizing the issuance of debentures in excess of said amount. This authorization for certificates of indebtedness to meet emergencies can only be explained and justified under the authority contained in Art. 9, Sec. 7, to contract debts to suppress insurrection and to provide for the public defense. Since providing for the public defense has been declared and defined to be broad enough it its meaning to include emergencies caused by floods, fire, earthquakes and drought, it is felt that the \$ 75,000. authorized in this section could be utilized by the Governor for any and all of such purposes within the Civil Defense Act, as he may deem necessary.

Since the \$ 75,000. authorization appearing above is a general authorization and the \$ 300,000. authorization and appropriation is also a general one for similar purposes, it is our opinion that in addition to the \$ 200,000. authorized in Art. 9, Sec. 7, of the Constitution, and the \$ 100,000. appropriated to the Board of Finance Emergency Fund, that the \$ 75,000. and the \$ 300,000. above mentioned would also be available for the purposes above discussed. In the event additional monies should be necessary in order to meet an emergency situation, a special session of the Legislature would be required to authorize the same.

By: C. C. McCulloh

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