

Opinion No. 54-5915

March 9, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Paul Tackett District Attorney Second Judicial District Second Floor Court House Albuquerque, New Mexico

{*356} This will acknowledge receipt of your letter of January 26, 1954, in which you ask our opinion as to the validity of bonds proposed to be issued by Bernalillo County, New Mexico for the purpose of enlarging and equipping the Juvenile Detention Home of that County.

You enclose photostatic copy of a letter from the firm of Pershing, Bosworth, Dick & Dawson, Bond Attorneys of Denver, Colorado, in which they disapprove of the issue as being in possible contravention of Article 9, Section 10, of the New Mexico Constitution.

After giving the matter considerable study, we feel that we are forced to agree with the letter you enclosed inasmuch as, in our opinion, the legality of these bonds is so questionable as to prevent us from approving the same in the absence of a Court determination to the contrary.

You will recall that the authorizing statute, being § 45-602 of the 1941 Compilation, as amended, permits the issuance of bonds "to add rooms onto the original structure or erect additional buildings." The notice of election stated the question as being to defray "the cost of enlarging and equipping the Juvenile Detention Home of Bernalillo County by adding rooms onto the original structure or by erecting additional rooms."

We do not feel that we can state unequivocally that the enlarging and equipping of the Juvenile Detention Home of Bernalillo County by adding rooms onto the original structure or by erecting additional rooms is in effect the erection of a new building.

The manner in which the question was proposed in the notice of election may also render the proposition dual or the question uncertain. See **Kiddy v. Board of County Commissioners of Eddy County**, 57 N.M. 145, 255 P. 2d 679.

If the question submitted to the electorate had been,

"Enlarging and equipping the juvenile detention home, which had been established by erecting additional buildings,"

there would be no question, in our opinion, as to the validity of the proceedings.

For the reasons stated, if a transcript of these proceedings is forwarded to us for approval, we will decline to approve the same as a proper investment by the State

Treasurer. However, we would be glad to cooperate in expediting a judicial determination of this matter.

By: Walter R. Kegel

Assist. Attorney General