

Opinion No. 55-6092

February 1, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: D. M. Smith, Jr., State Comptroller, Santa Fe, New Mexico

Your predecessor, Mr. Hartman, requested an opinion from this office for the benefit of the Town of Gallup, on the following question: "Whether a municipality, from the proceeds of a general obligation bond issue which is voted and approved for the 'enlargement, improvement and extension of the water system' and another issue which is voted for the 'enlargement, improvement and extension of the sewer system' may make expenditure for the following type of items: (a) equipment necessary in connection with the work involved; (b) replacement of worn out items; (c) reconditioning work of a capital improvement nature; and (d) repairs to existing equipment."

These bonds presumably were issued and sold under authority of §§ 14-40-16 -- 14-40-21 of the 1953 Compilation. § 14-40-16 provides as follows:

"Any incorporated city, town or village is hereby authorized and empowered, subject to the limitations and in accordance with the provisions of article IX of the Constitution, to issue negotiable bonds for the purpose of securing funds for the construction, purchase, enlargement, improvement or extension of a system of supplying water, or a sewer system or to provide proper means for protection from fire."

Art. IX, § 13, of the Constitution, provides as follows:

"No county, city, town or village shall ever become indebted to an amount in the aggregate, including existing indebtedness, exceeding four per centum on the value of the taxable property within such county, city, town or village, as shown by the last preceding assessment for state or county taxes; and all bonds or obligations issued in excess of such amount shall be void; provided, that any city, town or village may contract debts in excess of such limitation for the construction or purchase of a system for supplying water, or of a sewer system, for such city, town or village."

This section authorizes debts in excess of the constitutional limitation for the **construction or purchase** of a system for supplying water or of a sewer system. I assume that the bonds in question were in excess of the constitutional limit and come under the exemption covered by the words "construction or purchase of water or sewer systems."

The statute authorizing issuance of general obligation bonds uses the terms "construction, purchase, enlargement, improvement or extension of a system for supplying water or of a sewer system" and apparently the bonds were issued for the purpose of "enlargement, improvement or extension". If these added words not included

in the Constitution are, in fact, included in the word "construction" then the proceeds of the bond issues could undoubtedly be used for the purposes desired and mentioned above. In *State ex rel Edwards vs. Miller*, 21 Okla. 448, 598, the Court, in considering the meaning of the word "construction" states that it is broad enough to include extension or reequipping existing works. See also *Cabell vs. City of Portland*, 153 Ore. 528, 57 P 2d 1292, 1297.

Our Supreme Court has adopted a view of liberal construction in connection with the constitutional exception or exemption from the debt limitation relative to water and sewer systems. It is our opinion that the word "construction", broadly interpreted, would include enlargement, improvement or extension of an existing system in order to achieve a new and larger system as may be required.

It is, therefore, our opinion that the City may legally spend bond proceeds for the purposes mentioned in your letter, referred to above, without violating the provisions of the Constitution and laws regarding use of bond proceeds for purposes other than those for which they were voted.

By C. C. McCulloh

Assistant Attorney General