

Opinion No. 55-6311

November 7, 1955

BY: RICHARD H. ROBINSON, Attorney General

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

You have asked the opinion of this office relative to the legality of the Village of Columbus entering into a "Rental Agreement" with the Southwest National Bank of El Paso whereby the Village of Columbus agrees to rent a portion of land from said bank for a total consideration of \$ 2,400, payable as follows: \$ 450 on execution of the lease; \$ 666.66 payable on the first day of September, 1956 and 1957; and \$ 666.68 payable on the first day of September, 1958.

It is to be noted that the Village of Columbus leased this property to the Southwest National Bank of El Paso for a period of three years and by the above agreement is proposing to rent back same for the purpose of operating a swimming pool upon the premises. The manner of acquiring finances for the erection of said swimming pool is thus obvious.

The proposed "Rental Agreement" clearly violates the Constitution (Art. IX, Sec. 12), the Bateman Act (Sections 11-6-3 and 11-6-6, N.M.S.A., 1953 Compilation), and should not be approved by your office since it provides for a continued indebtedness beyond the term of the current year and binds the Village of Columbus beyond the term for which the present officials were elected.

Article IX, Section 12 of the New Mexico Constitution provides the method for a city, town or village to finance local improvements. In addition, it is possible for the Village of Columbus to rent the land at a specified annual rental, provided there is nothing contained in the agreement which would bind the city beyond the end of each current year. This is done frequently by way of a rental agreement with an option to buy provision attached thereto.

The supporting documents, which you forwarded to this office for study, are herewith returned to you.

By J. A. Smith

Assistant Attorney General