

Opinion No. 56-6483

June 29, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. C. C. Chase, Jr., District Attorney, Third Judicial District, County Court House, Las Cruces, New Mexico

This is in answer to a letter written to Pat McClernon, City Manager of Las Cruces, a copy of which was forwarded to this office. The letter referred to was written by a Mr. R. C. Robinson, Regional Director of the Federal Housing and Home Finance Agency. The letter dealt with information additional to that supplied by your office in a previous communication.

This is our opinion supplemental to the one from this office dated February 16, 1956 issued on a fact supposition now known to be mistaken.

The facts, as we now understand them to be, are as follows:

The City of Las Cruces wishes to clean up certain areas now held to be "slum" areas, said cleaning to be done under the provisions of the Federal Housing Act of 1949. A substantial sum of money is now to be advanced to the city by the Federal Government for the purpose of studies, surveys, etc., pertinent to the cleaning program. This money advance is conditioned, among other things, upon a contractual obligation to be assumed by Las Cruces for repayment.

New Mexico Statutes 1953, § 11-6-6, otherwise known as the Bateman Act, makes it unlawful for any political subdivision to become indebted or contract debts "during any current year which at the end of such current year is not and cannot then be paid out of the money actually collected and belonging to that current year ___". This, of course, does not in anywise affect a bond issue otherwise valid and lawful.

The case of State v. Board of County Commissioners of Colfax County, 33 N.M. 340, 267 P. 72, is extremely pertinent. We find in the opinion concerning the second point of the case:

"We do not think the Bateman Act should be applied in a case where the state itself is a creditor. The evil to be avoided is well understood. We need not repeat what has been said on that subject. The evil did not include the proneness of county and other boards to incur excessive indebtedness to the state. There is no reason to suppose that indebtedness to the state was contemplated. On the same principle that statutes of limitation do not run against the state (Hagerman v. Territory, 11 N.M. 156, 66 P. 526, 27 C.J. 710 et seq.), we think that a statute declaring indebtedness void under certain circumstances should not affect indebtedness to the state unless the state is expressly named in the statute as subject to its provisions."

This case has never been repudiated although referred to several times subsequently by the Supreme Court.

Arguing analogically, we are of the opinion that nothing in the above indicates that the Supreme Court would exclude the Federal Government from the same preferential treatment afforded the State of New Mexico. Just as the Supreme Court is of the opinion that the Bateman Act does not apply to a county indebtedness to the State of New Mexico as such was not the evil to be legislated against, we are of the opinion that the Supreme Court will determine that it does not apply to an indebtedness of a municipality to the Federal Government, equally not the evil in legislative contemplation.

By Howard M. Rosenthal

Assistant Attorney General