

Opinion No. 60-172

September 23, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. Frank Horan City Attorney Albuquerque, New Mexico

QUESTION

QUESTIONS

1. Does a new facility (consisting only of land, a building on the land, and equipment in the building but not including the acquisition of the assets or stock of a business or corporation located outside the State of New Mexico) constitute a "project" within the meaning of § 14-41-31, N.M.S.A., 1953 Compilation (P.S.)?
2. May such a facility, if located within 15 miles of the corporate limits of the municipality, be acquired by the municipality?
3. May such a facility be sold or leased by the municipality to a corporation incorporated outside the State of New Mexico?
4. May such a facility be sold or leased by the municipality to a corporation already doing a significant volume of business within the State of New Mexico?
5. May the municipality issue revenue bonds for the purpose of defraying the cost of acquiring such a facility?

CONCLUSIONS

- 1, 2, 3 and 4 -- Yes.
5. Yes, subject to the limitations of §§ 14-41-31 to 43.

OPINION

{*563} ANALYSIS

The answers to your questions require that we reconsider portions of Opinion of the Attorney General No. 60-114, dated June 17, 1960, wherein we construed the definition of "project" as found in § 14-41-31, N.M.S.A., 1953 Compilation (P.S.). We undertake this reconsideration in view of a review of the legislative intent of the Act as found in § 14-41-32, N.M.S.A., 1953 Compilation (P.S.) and the history of municipal revenue bonding acts generally. The Legislature sets forth its intent in this Act as follows:

"It is the intent of the legislature by the passage of this act to authorize municipalities to acquire, own, lease or sell projects for the purpose of promoting industry and trade by inducing manufacturing, industrial and commercial enterprises to locate **or expand** in this state, promoting the use of the agricultural products and natural resources of this state, and promoting a sound and proper balance in this state between agriculture, commerce and industry. It is intended that each project be self-liquidating. It is not intended hereby to authorize any municipality itself to operate any manufacturing, industrial or commercial enterprise. **This act shall be liberally construed in conformity with the said intent.**"

It is important to keep this expressed intent in mind throughout our discussion of this Act since, after all, our sole purpose is to attempt to ascertain what exactly the Legislature meant and intended by the words it used in the Act.

By way of background, the States {**564*} of Alabama, North Dakota, Illinois, Kentucky, Louisiana, Tennessee and Vermont have enacted statutes similar to New Mexico's with only minor procedural changes. It is of considerable interest to note that New Mexico's Act is almost a verbatim copy of the Alabama Act. One of the few differences found in the New Mexico Act is the inclusion of the middle clause in the definition of the word "project." This seems to be the critical clause upon which the answers to your questions depend. The definition of "project" is found in § 14-41-31, *supra*, and reads in relevant part as follows:

". . . 'Project' means any land, and building or other improvements thereon, the acquisition by or for a New Mexico corporation of the assets or stock of an existing business or corporation located outside the state of New Mexico to be relocated within or near the municipality in the state of New Mexico, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, . . ."

While the position was taken in the above cited opinion that these three clauses must be read conjunctively, we are now of the opinion that they are more properly read in the disjunctive if we are to permit the intention of the Legislature to be carried out. This is especially so in view of the last sentence of § 14-41-32, *supra*, which indicates that the Act shall be liberally construed to achieve the intention therein stated. That intention includes not only the desire to relocate enterprises in this state but also to expand enterprises in this state. As we view the problem, this intention could not be met if the three clauses of § 14-41-31 defining "project" are read conjunctively since that would mean that a project would have to involve the acquisition of the stock or assets of an out-of-state corporation for transfer to a New Mexico corporation. The very limiting nature of this type of restriction is pointed up if we consider the effect of this restriction by way of an example. For instance, if General Motors Corporation desired to build an assembly plant in New Mexico, this narrow restriction would mean that all of the stock or assets of the great General Motors Corporation would have to be transferred to the municipality in exchange for the bonds issued under the Act. Such a result is patently absurd. For a further discussion of the result of such a construction, see *Municipal Inducements -- The New Mexico Commercial and Industrial Project Revenue Bond Act*,

48 Cal. L. Rev. 58 (1960). If we hold, as we do, that the three clauses must be read in the disjunctive, the express intention of the Legislature will be reached.

We turn now to the specific questions asked by you. The answer to your first question is in the affirmative since under a disjunctive reading the facility as defined in your question meets the requirements of § 14-41-31, supra, in that it is "land and buildings or other improvements thereon."

The answer to your second question is also in the affirmative inasmuch as a municipality is authorized to acquire projects under § 14-41-33, N.M.S.A., 1953 Compilation (P.S.), and since we hold that the facility is a project within the meaning of § 14-41-31, supra, the facility may be acquired by a municipality.

The answer to your third question is based upon the same analysis. Under § 14-41-33, supra, municipalities are authorized to dispose of projects in a manner not in conflict with the Act, and under § 14-41-31, supra, we have held that a New Mexico corporation need not be involved in the agreement by virtue of a disjunctive reading of the definition of that section. We hold that a municipality may dispose of a project to a corporation organized outside of the State of New Mexico. This corporation, of course, would first have to qualify to do business within the State of New Mexico.

{*565} The answer to your fourth question is also yes. Under the intent of the Legislature expressed in § 14-41-32 that this Act promote the expansion of enterprise and under the disjunctive reading of the definition of "project," this Act applies to the expansion of industry already located within the state. The promotion of industry and trade within New Mexico can be achieved equally as well by expanding existing industry within the state or by relocating branches of industry already within the state as well as relocating a new industry. This is in keeping with the intent of the Legislature in this regard.

The answer to your fifth question is ipso facto yes in view of the affirmative answers to your first four questions. The bonds authorized under this Act may be issued to acquire a facility such as you describe.

The portions of Opinion of the Attorney General No. 60-114 which are in conflict herewith are hereby expressly overruled.

By: Boston E. Witt

Assistant Attorney General