

Opinion No. 60-190

October 13, 1960

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

TO: Mr. Fred W. Phelps Director New Mexico Department of Development State Capitol
Santa Fe, New Mexico

QUESTION

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1. Can a municipality issue industrial revenue bonds to acquire a "project" that will include both (1) a branch plant operation that will be located within fifteen miles of the municipality, and (2) the parent company, which is located, and will remain located outside of the State of New Mexico?
2. Can a municipality levy taxes on a project purchased through the issuance of industrial revenue bonds?

CONCLUSIONS

1. No.
2. See Analysis.

OPINION

{*591} ANALYSIS

The answer to your first question will be found by reference to the powers granted to municipalities by Section 14-41-33, N.M.S.A., 1953 Compilation, (P.S.).

"Additional powers conferred on municipalities. -- In addition to any other powers which it may now have, each municipality shall have the following powers: (a) to acquire, whether by construction, purchase, gift or lease, one (1) or more projects, **which shall be located within this state** and may be located within or without the municipality, or partially within or partially without the municipality, but **which shall not be located more than fifteen (15) miles outside of the corporate limits of the municipality; . . .**" (Emphasis supplied).

We think the underlined portions of the quoted statute determine the answer to your first question. A municipality has no power to acquire a "project" that is located, and is to remain located, either outside of the State or more than fifteen miles outside the corporate limits of the municipality. Therefore, a municipality may not acquire a "project"

that includes a business that is located outside the State, unless that out of State business is to be relocated within New Mexico, and within fifteen miles of the corporate limits of the acquiring municipality.

Your second question involves whether a municipality, having acquired a project, can still levy taxes against that project. We can give only a general answer. Firstly, we must bear in mind that municipal property is exempt from taxation. The Constitution of New Mexico, Art. VIII, Section 3, provides:

("Tax exempt Property)

The property of the United States, the state and all counties, towns, cities and school districts, and other municipal corporations, public libraries, community ditches and all laterals thereof, all church property, all property used for educational or charitable purposes, all cemeteries not used or held for private or corporate profit, and all bonds of the state of New Mexico, and of the counties, municipalities and districts thereof shall be exempt from taxation."

{*592} Moreover, Section 14-41-41, N.M.S.A., 1953 Compilation, (P.S.), provides:

"Exemption from taxation. -- The bonds authorized by this act (14-41]31 to 14-41-43) and the income from said bonds, all mortgages or other security instruments executed as security for said bonds, all lease agreements made pursuant to the provisions hereof, and revenue derived from any lease or sale by the municipality thereof shall be exempt from all taxation by the state of New Mexico, or any subdivision thereof."

The effects of the quoted constitutional and statutory provisions are construed in **Village of Deming v. The Hosdreg Co., Inc.**, 62 N.M. 18, 303 P. 2d 920 (1956), where it was held that the exemptions applied only to the municipally-owned portions of the project. At page 34, the Court said:

"There is nothing in the act exempting the defendant from ad valorem taxes on its leasehold interest, raw materials, stock and equipment. Nor are private corporations absolved from payment of income, privilege or other excise taxes."

In view of the constitutional and statutory provisions cited, and the construction given them in the **Hosdreg** Case, supra, it is clear that the municipally-owned portions of a project are tax exempt. If a municipality acquires land, and leases that land for the construction and operation of a project, of course the land owned by the municipality is not subject to an ad valorem tax. But the leasehold interest of the corporation operating the project, and all its raw materials, stock, equipment, and buildings may be so taxed, and all of our privilege, excise, and income taxes are still applicable. If the municipality acquires all the assets of a business and sets them up on land that the municipality purchases and equips for the project, there is still a valuable leasehold interest that may be separately assessed and taxed. In this connection, see **Kirtland Heights, Inc. v. Board of County Commissioners of Bernalillo County**, 64 N.M. 179, 326 P. 2d 672

(1958), holding that the leasehold interest of a lessee of lands from the Federal government is subject to local ad valorem taxes. The other classes of taxes are equally applicable to the second situation posed. Many other factual situations could probably be invented. Our only definite answer to your second question is that a municipality cannot levy taxes against any part of a project that is municipally-owned, but parts not owned by the municipality are open to taxation.

By: Norman S. Thayer

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