

Opinion No. 60-56

March 28, 1960

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

TO: Honorable Mayo T. Boucher State Representative Belen, New Mexico

QUESTION

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Are State Highway Debenture Bonds, authorized by Laws of 1955, Chapter 269 (§§ 64-26-59 through 64-26-65, N.M.S.A., 1953 Compilation, as amended), such general obligations of the State as to place them within the constitutional provisions pertaining to restrictions upon state indebtedness?

CONCLUSION

Yes.

OPINION

{*413} ANALYSIS

The Constitution of New Mexico, Article IX, Section 8, limits the amount that the State may become indebted to one percent of assessed valuation of all property in the State subject to taxation. The term "debt," as used in this section, has been held by our Supreme Court to contemplate an obligation pledging for its repayment the general faith and credit of the State and contemplating the levy of a general property tax as the sources of funds with which to retire the obligation. **State ex rel. Capitol Addition Bldg. Comm. v. Connelly**, 39 N.M. 312, 46 P. 2d 1097, 100 A.L.R. 878.

Article IX, Section 16 of our Constitution provides an express exception to Section 8, supra, applicable to highway debentures. This latter section provides generally that highway debentures need not be submitted to a popular vote and that the debt limitation may be temporarily exceeded with other conditions interposed.

Your question has been answered by our Supreme Court in the case of **State ex rel. Linn v. Romero**, 53 N.M. 402, 209 P. 2d 179 (1949), in which it was held that highway debenture bonds issued under authority of Laws of 1947, Chapter 35, were such obligations as to constitute a public debt within the meaning of Sections 8 and 16, Article IX, Constitution of New Mexico. It is to be noted that the 1947 Act is identical, or substantially identical, to the present Act. It provided:

"The state highway commission of the state of New Mexico is hereby authorized to anticipate the proceeds of the collection of any or all of the gasoline excise taxes, motor vehicle registration fees and **property** and other taxes **to the extent to which it is provided by law that the proceeds of the collection of such fees and taxes shall be covered into the state road fund . . .**" (Emphasis added).

{*414} The road fund referred to in the statute was created by the Territorial Legislature in the year 1909 by Chapter 42 of the laws of that session and it provided for an annual tax to be levied in an amount not to exceed one mill upon the dollar of taxable property in the territory. The Act of 1909 was largely amended by Chapter 54, Laws of 1912, which created a State Highway Commission and gave the Commission the responsibility of **"all matters pertaining to the expenditure of the state road fund** in the construction, improvement and maintenance of public roads and bridges." See **State Highway Comm'rs. v. Sargent**, 20 N.M. 577.

The present act providing for tax levy, collection and payment into the state road fund is found in § 55-2-43, N.M.S.A., 1953 Compilation. This act provides in part:

"In order to provide funds for carrying out the provisions of this act, and for the survey, location, construction and improvement of highways and bridges, **there is hereby levied upon all taxable property in the state an annual tax** of one and one-half (1 1/2) mills upon the dollar, . . .

It is hereby made the duty of the state auditor to cause such levy to be certified to the board of county commissioners of each county in the state each year, and said tax shall be extended upon the assessment rolls, assessed, and collected at the times and in the manner provided by law for the extension upon assessment rolls, assessment and collection of other state taxes; and the proceeds thereof shall be paid over by the several county treasurers, . . . to the state treasurer **and covered into the state road fund.**" (Emphasis supplied).

In **State v. Romero**, supra, the Court, in reaching its decision, relied upon its earlier decision of **State Office Bldg. Commission v. Trujillo**, 46 N.M. 29, 120 P. 2d 434, in which it was held that debentures to be retired from rentals collected from state agencies for office space in the State Office Building were "public debts" in the sense used in Section 8 of Article IX of the Constitution since the debentures did not affirmatively state that no part of the obligation would be paid from general taxation. In that case the Court said:

"It is suggested in argument that the various agencies named in the Act, or some of them, will or do obtain moneys from excise taxes, fees, etc., out of which they could pay the rentals; **but the Act does not direct or require that such rentals shall be paid from such sources. As we have pointed out, before a special fund scheme may prevail it is necessary that the sources for payment of the financial obligation be set out in the creation of the obligation in order to clearly disclose that no part of the obligation is to be paid or satisfied from general taxation.**" (Emphasis added).

In **State v. Romero**, supra, the Court, relying upon the above language, stated:

"According to that decision, and we reaffirm its doctrine, if any part of the funds used to pay these debentures will be, or may be, lawfully obtained from a general ad valorem tax levy on property in the state, they are 'public debts' of the state in the sense these words are used in Sec. 8 of Art. 9 of the state Constitution.

This language gives your question the complete answer, since, by law, the state road fund is, **or may be**, fed from a general ad valorem tax levy on property in the state and it is this fund which is pledged to the retirement of highway debentures authorized by § 64-26-59.

By: Patricio S. Sanchez

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