

Opinion No. 61-102

October 6, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E. Payne, Assistant Attorney General

TO: Mr. Ethen K. Stevens, Assistant District Attorney, Eighth Judicial District, Clayton, New Mexico

QUESTION

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1. Does Section 14-30-9, N.M.S.A., 1953 Compilation forbid a town from expending in excess of \$ 500.00 for cemetery property?
2. If so, can the town spend \$ 500.00 per year to purchase cemetery property, and enter into a binding contract for future installment payments of this amount?
3. Can an option contract arrangement be used whereby it is exercise successively each year by paying \$ 500.00 for a designated portion of the land?

CONCLUSIONS

1. Yes.
2. No.
3. No.

OPINION

ANALYSIS

It is our understanding that the Board of Trustees of the Town of Clayton would like to purchase 38 acres of land for cemetery purposes at a prospective price of something less than \$ 1000.00 per acre. The property in question is adjacent to the present cemetery acreage and the present owner is willing to sell it to the town.

The statutory provision here involved is Section 14-30-9, N.M.S.A., 1953 Compilation. This section forbids any city, town or village from expending money in excess of \$ 500.00, "for the purchase of any property, under the provisions of this section, except upon a petition of taxpayers representing two-thirds of taxes paid upon property within the city, town or village limits during the preceding year."

In answer to your first question, this is an absolute prohibition against spending more than \$ 500.00 for the purchase of any property for cemetery purposes unless the taxpayers' petition proviso is used.

You next ask whether the town can spend \$ 500.00 **per year** for the purchase of such property by means of a binding contract. There are two legal objections to such a procedure. First, the statutory prohibition is not against spending in excess of \$ 500.00 **per year** for property for cemetery purposes but against spending in excess of \$ 500.00 for **any property** to be so used. Second, such a procedure would violate Article IX, Section 12, of the New Mexico Constitution for two separate reasons. This constitutional provision limiting the power of municipalities to incur debts is not self-executing, that is it does not confer upon municipalities the power to contract indebtedness independent of legislative authorization. **Lanigan v. Gallup**, 17 N.M. 627, 131 Pac. 997, **Henning v. Hot Springs**, 44 N.M. 321, 102 P. 2d 25. And we find no such authorization granted for incurring indebtedness in order to purchase cemetery property. In addition, the procedure mentioned would result in a debt whose creation is prohibited since, it would pledge the general credit of the municipality. **Capitol Addition Building Commission v. Connelly**, 39, N.M. 312, 46 P. 2d 1097.

Your third inquiry regards the legality of a procedure whereby the town would enter into an option contract and exercise the option successively each year by paying \$ 500.00 for a **designated portion** for the total acreage.

Whether the Town attempted to use this option-type arrangement or simply attempted to purchase certain designated portions from time to time at \$ 500.00 a tract ,we believe Section 14-30-9, supra, would be violated. Our reasoning here is that the word "any", as used in the provision that money in excess of \$ 500.00 cannot be expended for **any** property, is synonymous with the word "all". **Boyd v. Bell**, 68 Ariz. 166, 203 P. 2d 618; **Branham v. Minear**, Tex. Civ. App., 38 S.W. 2d 141.

Any other construction of the word "any" as used in the context of Section 14 - 30 - 9, supra, would mean that the statutory prohibition could be circumvented at the will of the local governing body. A prospective seller of property to the municipality for cemetery purposes could subdivide a large tract and then sell it to the municipality for \$ 500.00 a parcel.

By this depression-period enactment, it is our opinion that the legislature intended to limit municipalities to a **total** expenditure of \$ 500.00 for cemetery property unless the petition method was used whereby the taxpayers agreed to a larger expenditure.