

## **Opinion No. 61-113**

November 3, 1961

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Thomas A. Donnelly, Assistant Attorney General

**TO:** Julius C. Sanchez, Assistant District Attorney, Seventh Judicial District, Socorro, New Mexico

### **QUESTION**

#### QUESTION

May an incorporated municipality for the purpose of providing an extended flood protection development plan, and under its existing borrowing capacity negotiate and obtain a loan from the present Federal development plan, Public Law 87-27, which makes available funds to such municipality?

#### CONCLUSION

See analysis.

### **OPINION**

#### ANALYSIS

Sections 14-31-1 through 14-31-8, N.M.S.A., 1953 Comp., provide statutory authorization for incorporated cities, towns and villages to protect the property of inhabitants of such municipalities from damage from flood waters.

Under such statutory provisions, municipalities are empowered expressly with authority to levy a tax upon any and all property situate within the municipalities, not to exceed five mills in any one year upon each and every dollar of assessed valuation of property in such municipalities.

In addition to such tax levy, municipalities may, under the provisions of Sections 14-31-2 and 14-31-3, N.M.S.A., 1953 Comp., cause bonds of the municipality to be issued in order to provide funds for flood control purposes within the municipality.

Section 14-31-8, N.M.S.A., 1953 Comp., specifically provides that municipalities are authorized to cooperate with agencies of the Federal government in order to secure protection in such municipality from damages by flood waters. This section sets out in full as follows:

**"Cooperation with other public agencies.** -- Such municipality is hereby authorized to cooperate with any other municipality, or with any county, or with the state of New Mexico, or any agency of the United States in carrying out the objectives and provisions of this act [14-31-1 to 14-31-8] in order to secure protection in such municipality from damages by such flood waters, and the fact that any county in which such municipality is situated may have caused a tax to be levied for flood purposes under the provisions of section 33-5001 to 33-5009, inclusive, New Mexico Statutes Annotated, Compilation of 1929 [15-50-1 to 15-50-9], or any other law of the state of New Mexico shall not prohibit such municipality from also levying a tax upon property within its limits and contributing the proceeds thereof to such work or works."

The above sections, relating to municipal flood control, constitute the means and authority by which a municipality may raise funds, condemn land and build such dams, embankments, structures or excavations as are necessary and proper to prevent flood waters from damaging property or endangering life within the municipality. By express provision such legislation authorizes a municipality to cooperate with other municipalities, counties and agencies of the state and of the United States for flood protection and to effectuate such control measures.

A close examination of Public Law 87-27, 87th Congress, indicates that the express purpose of the Federal "Area Redevelopment Act" is to enable the Federal government, in cooperation with the states, to help areas of substantial unemployment to take steps in financing economic redevelopment. The declaration of purpose of such Federal Act, sets out in part as follows:

". . . the Federal Government, in cooperation with the States, should help areas of substantial and persistent unemployment and underemployment to take effective steps in planning and financing their economic redevelopment; that Federal assistance to communities, industries, enterprises, and individuals in areas needing redevelopment should enable such areas to achieve lasting improvement and enhance the domestic prosperity by the establishment of stable and diversified local economies and improved local living conditions; and that under the provisions of this Act new employment opportunities should be created by developing and expanding new and existing facilities and resources rather than by merely transferring jobs from one area of the United States to another."

Section 7 of the "Area Development Act", provides for loans to States, political subdivisions, Indian tribes or public non-profit organizations to carry out the purposes of the Act. This section specifies in part as follows:

"(a) Upon the application of any State, or political subdivision thereof, Indian tribe, or private or public nonprofit organization or association representing any redevelopment area or part thereof, the Secretary is authorized to make loans to assist in financing the purchase or development of land for public facility usage, and the construction, rehabilitation, alteration, expansion, or improvement of public facilities, within a redevelopment area, if he finds that --

- (1) the project for which financial assistance is sought will tend to improve the opportunities, in the redevelopment area where such project is or will be located, for the successful establishment or expansion of industrial or commercial plants or facilities which will provide more than a temporary alleviation of underemployment in such area;
- (2) the funds requested for such project are not otherwise available on reasonable terms;
- (3) the amount of the loan plus the amount of other available funds for such project are adequate to insure the completion thereof;
- (4) there is a reasonable expectation of repayment; and
- (5) such area has an approved economic development program as provided in section 6(b) (10) and the project for which financial assistance is sought is consistent with such program."

From an examination of Public Law 87-27, 87th Congress, it is evident that the announced purpose of such act is to foster reemployment within such areas as have been found to be by the affected State, and the Area Development Director, critical areas of unemployment and which by the extension of Federal assistance in the form of long-term loans may achieve a revitalization of employment therein. It is evident that under such act the State or political subdivision seeking to participate therein must show that the area is a critical area of unemployment, that the redevelopment plan of such applicant would result in more than temporary unemployment in such area, that the funds requested are not otherwise available for such project from other sources, and that other local funds are available for completion of the project.

Upon our study of the State statutes governing flood control measures by municipalities and from a reading of the Federal "Area Redevelopment Act", it is evident that a municipality, if it can show that it constitutes an area which should be designated as a "redevelopment area" may properly apply for Federal assistance under a submitted redevelopment plan. To qualify under such Federal act, such municipality must also show that there has existed therein for a substantial and extended period of time, persistent unemployment which is currently at a level of six per centum or more, and which is at least fifty per centum above the national average for three of the preceding four calendar years.

We have previously held that Federal assistance to a county and municipality under the provisions of Sec. 14-31-1 through 14-31-8, N.M.S.A., 1953 Comp., is proper under our prior Attorney General's Opinion No. 6522, dated September 27, 1956, where it was ruled that a county and a city have the power to cooperate jointly with the Federal government in seeking Federal assistance under Public Law 566, designated the "Watershed Protection Act", subject to statutory provisions concerning budgetary expenditures by local agencies.

Based upon the foregoing, it is our opinion that, under the above statutes, and upon a proper showing to the Federal authorities by the municipality, that the proposed flood control measures of the municipality fall within the requisites included within such Federal act, that the municipality may properly expend public funds and participate in such area redevelopment programs, in cooperation with the Federal government, subject to compliance with the provisions of Sec. 14-31-1 through 14-31-8, N.M.S.A., 1953 Comp., and to the debt limitations imposed upon municipalities by virtue of Sec. 14-31-2, N.M.S.A., 1953 Comp., and Article IX, Sections 12 and 13, of the New Mexico State Constitution.