

Opinion No. 63-03

January 15, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Mr. Patrick F. Hanagan District Attorney Fifth Judicial District Chaves County Court House Roswell, New Mexico

QUESTION

QUESTIONS

1. Can a municipality issue its general obligation bonds for construction of a sports stadium (football, baseball, track and field events) for public use at a special election under the provisions of Section 6-3-9 or other statute, N.M.S.A., 1953 Compilation?
2. Can general obligation bonds of a municipality for the construction of a coliseum type auditorium be voted at a special election under the provisions of above cited 6-3-9, N.M.S.A., 1953 Compilation?
3. Can a municipality issue its general obligation bonds for construction of an auditorium and, a sports stadium upon fee land leased from New Mexico Military Institute and or New Mexico Military Institute Foundation, Inc., for a term of fifty years with option thereon for an additional twenty-five years?

CONCLUSIONS

1. See analysis.
2. See analysis.
3. Yes, see analysis.

OPINION

{*6} ANALYSIS

1. Section 6-3-9, N.M.S.A, 1953 Compilation only involves the power of municipalities "to borrow money to build auditoriums" as was declared by the New Mexico Supreme Court in **Varney v. City of Albuquerque**, 40 N.M. 90, 101, 55 P. 2d 40 (1936). Therefore, a sports stadium is deemed not to be included within the terms of Section 6-3-9, supra.

Statutory authority for the construction of a sports stadium can be found under Section 6-4-2, N.M.S.A., 1953 Compilation which authorizes the governing body of a

municipality to acquire or lease lands and buildings "for use as playgrounds, recreation centers and other recreation purposes." The financing of such a project is governed by Section 6-4-8, N.M.S.A., 1953 Compilation which provides:

"Power to issue bonds. -- The governing body of any municipality is hereby authorized to issue and dispose of negotiable bonds thereof, subject to the limitation and in accordance with article IX of the Constitution, for the purpose of securing funds for the acquisition of lands or buildings for playgrounds, recreation centers and other recreational purposes and the equipment thereof, to the extent and in accordance with the provisions of sections 14-3615 to 14-3620 (14-40-16 to 14-40-21), inclusive, of the 1941 Compilation."

A special election on the voting and issuance of the bonds **cannot** be held since Section 6-4-8, supra, expressly points out a controlling state constitutional limitation affecting the issuance of the bonds. This provision is Article IX, Section 12 pertaining to restrictions on municipal indebtedness. Under this provision a bond election must take place at the same time as the "regular election" of officers of the city.

{*7} 2. Although the bonds financing an **auditorium** might be issued pursuant to Section 6-3-9, supra, an election thereon is subject to the constitutional limitation as explained under Question No. 1 above and must take place at the same time as the "regular election" of officers of the city.

3. A municipality has the "power to acquire and hold property" under Section 14-21-1, N.M.S.A., 1953 Compilation. With the **exception** of the forty acres upon which the main portion of the buildings are situated and excepting lands granted by Act of Congress, the board of regents of the New Mexico Military Institute has the authority to lease lands and property of the institution for the use and benefit of the institution under Section 73-28-5, N.M.S.A., 1953 Compilation. This latter requirement is met by the terms of the lease since the city of Roswell is to hold the premises for the use and benefit of the cadets of the New Mexico Military Institute.

Taking into consideration the foregoing exception, such a lease agreement would appear to be valid so long as the contemplated life of the building is equal to the term of the lease. Approving agreements of this type subject to the above condition is in accord with a long standing policy of this office. Please note, however, that the proposed agreement is subject to the approval of the State Board of Finance under Section 6-1-8, N.M.S.A., 1953 Compilation.

By: George Richard Schmitt

Assistant Attorney General