

Opinion No. 63-82

July 15, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Mr. J. J. Montoya Chairman Board of County Commissioners Taos County Court House Taos, New Mexico

QUESTION

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(1) Under state law does a county have the authority to act as sponsor or co-sponsor for Public Law 566 watershed protection and flood prevention projects?

(2) Can counties participate in the flood prevention, irrigation improvement and development, and recreational development aspects that may be associated with Public Law 566 projects?

CONCLUSIONS

(1) Yes.

(2). Yes.

OPINION

{*174} ANALYSIS

At a recent meeting the Taos County Board of County Commissioners executed a resolution to co-sponsor the Taos Creek, Little Rio Grande, Embudo River, Arroyo Grande and San Cristobal Watershed applications for participation in Public Law 566 projects {*175} as administered by the Soil Conservation Service, provided the county has such authority. Thus your first question is whether the county does have such authority.

Section 15-36-1, N.M.S.A., 1953 Compilation, setting forth the general powers of counties, provides in part that counties may "make all contracts and do all other acts in reference to the property and concerns necessary to the exercise of its corporate or administrative powers." Section 15-37-16, N.M.S.A., 1953 Compilation, grants to the Board of County Commissioners the power "To represent the county and have the care of the county property and the management of the interest of the county in all cases where no other provision is made by law."

In reference to the first statute cited above, our Supreme Court has said (**Agua Pura Company v. City of Las Vegas**, 10 N.M. 6):

"These clauses seem to mean something more than the ordinary powers appertaining to counties. They confer express authority to do the acts in the interest of the county, and to make contracts in reference to the concerns necessary to the exercise of this authority, when not otherwise provided by law. We do not understand that the grant of power to counties or other municipal corporations must contain a specification of each particular act to be done, but it is sufficient if the words used be sufficiently comprehensive to include the proposed act."

Based on Section 15-36-1, supra, and 15-37-16, supra, and the interpretation placed thereon by the Court, as well as the broad county flood control authority contained in Sections 15-50-1 through 15-50-17, N.M.S.A., 1953 Compilation, this office has previously concluded: (1) That a county and a city can enter into an agreement to cooperate in sponsoring a flood control project, and (2) That counties and cities can cooperate with the Federal Government and can seek aid under Public Law 566, the Watershed Protection and Flood Prevention Act. Opinion No. 6522.

We would also point out that the old Public Works Act (Section 6-8-1 through 6-8-18), while admittedly a depression enactment, is still in effect and is broad enough to allow counties and other political subdivisions to contract with the Federal Government concerning the type of projects here in question. We so conclude because this enabling legislation referred not only to projects undertaken under the auspices of the National Industrial Recovery Act, but also to "any further Act of the Congress of the United States of America to encourage national industrial recovery and **to provide for the construction of useful public works.**" (Emphasis added).

We have no reluctance whatever in advising you that under state law a county can sponsor or co-sponsor a project being initiated under Public Law 566, and thus we answer your first question in the affirmative. Of course, the county must stay within constitutional debt limitations and within statutory special assessment limitations.

Your second question is too broad to be answered in the abstract. However, we will advise you on certain matters at this time and will give you detailed answers when a particular project is being finalized and the Federal Government requires that certain obligations and provisions {^{*}176} be inserted in the contract.

You mention the obtaining of easements and rights-of-way by condemnation procedures. Under Section 15-50-5, N.M.S.A., 1953 Compilation, County flood commissioners have the power to condemn property for the purpose of carrying the act into effect. The basic purpose of the act is to "construct and maintain dykes, dams, embankments, and ditches, or such other structures or excavations as shall be deemed proper to prevent flood waters from damaging property or human life." Section 15-50-2, N.M.S.A., 1953 Compilation.

Incidentally, I do not believe that the office of county flood commissioner has been created in Taos County. If this is the case, the Board of County Commissioners need only to approve such office. When that is done, the Governor of the State should be requested to appoint the Commissioner pursuant to Section 15-50-1, N.M.S.A., 1953 Compilation. This is suggested in order that the powers contained in Sections 15-50-1 through 15-50-17, and they are extensive, may be utilized if needed.

You also mention that these water resource projects may encompass certain recreational facilities. In this connection it should be noted that under Section 6-4-1, et seq., N.M.S.A., 1953 Compilation, counties may dedicate and set apart lands which are owned or leased by the county for recreation purposes, and the county may also acquire lands for recreational purposes. Section 6-4-9, N.M.S.A., 1953 Compilation, governs the matter of expenses in equipping, operating and maintaining such recreation facilities.

Without going into full detail at this time, it would also appear that the Joint Powers Agreements Act could be used in connection with these water recreation facilities. Sections 4-22-1 through 4-22-7, N.M.S.A., 1953 Compilation.

By: Oliver E. Payne

Assistant Attorney General