

Opinion No. 65-168

August 31, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Mr. Anthony A. Lucero, State Representative, 210 Rio Grande, N.W., Albuquerque, New Mexico

QUESTION

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May a municipality expend public funds to retain a public relations firm for the purpose of advertising the city and disseminating information to the citizenry relative to the activities of the city government?

CONCLUSION

Yes, subject to the limitations hereinafter set forth.

OPINION

{*281} ANALYSIS

It is a fundamental principal in this State that municipalities have only such powers as are expressly granted them or as are necessarily implied from expressed powers.

Insofar as municipal finances are concerned, the 1965 Municipal Code provides as follows in Section 14-36-2:

"The governing body shall: A. Control the finances and property of the municipality; B. appropriate money **for Municipal purposes only**; and C. provide for payment of debts {*282} and expenses of the municipality." (Emphasis added).

This provision narrows the issue to the following: In the expenditure of public funds by a municipality for the purpose of advertising the city and disseminating information relative to the activities of city government a municipal purpose?

In order to answer your question we must make two assumptions, to-wit: that the city charter does not prohibit the expenditure of city funds for these purposes, and that the city will not issue bonds for the purpose of raising the revenue necessary to pay the cost of such advertising.

The first assumption must be made because if the charter contains such a restriction, it controls. Section 14-14-11, Municipal Code. The second assumption must be made because if bonds are to be issued to finance the program, then a majority vote of the electorate approving the issuance must be obtained. Article IX, Section 12, New Mexico Constitution.

Keeping these assumptions in mind, we turn to the judicial precedent dealing with the subject matter of your inquiry. In the case of **Sacramento Chamber of Commerce v. Stephens**, Cal., 299 Pac. 728, the court stated as follows:

". . . it is now generally held to be well within a **public purpose** for any given locality to expend public funds, within due limitations, for advertising and otherwise calling attention to its natural advantages, its resources, its enterprises, and its adaptability for industrial sites, with the object of increasing its trade and commerce and of encouraging people to settle in that particular community." (Emphasis added).

In a similar vein, the North Carolina court held in the 1960 case of **Dennis v. City of Raleigh**, N.C., 116 S.E. 2d 923 that moneys used "for advertising to promote the public interest and general welfare of the city" was a legal expenditure for a "public purpose." And the phrase "public purpose" is synonymous with the phrase "municipal purpose", the latter of which is used in our Municipal Code. **Gurin v. City of Tallahassee**, Fla., 132 So. 2d 275.

There are a few cases, **Moreland v. City of San Antonio**, Tex., 116 S.W. 2d 823 to name a particularly appropriate one, which hold that public funds may be expended to advertise a city **only**, if expressly authorized by statute or city charter. But even this doctrine creates no legal impediment to the expenditures here in question. In 1925 our legislature enacted Sections 14-44-1 through 14-44-3, N.M.S.A., 1953 Compilation authorizing municipalities with a population of 5,000 more to levy a tax for the purpose of advertising the municipality. Admittedly this Act was repealed by the Municipal Code (Chapter 300, Laws 1965), but that was simply done in order to codify our municipal laws. Since the new Code authorizes expenditures for municipal purposes, and since advertising and promoting a municipality is such a purpose, as seen above, there is statutory authorization for such expenditures.

City government is a vital factor in the growth or decline of a municipality and we do not believe that "advertising" the municipality is limited to programs designed solely to attracting more people to move to the area. Just as important, and perhaps even more so, is an advertising program with the objective of informing the populace of the activities of city government.

However, we would note in conclusion that the advertising program must be for the benefit of the citizenry. It must be designed to disseminate information to the inhabitants of the community and cannot be used to promote or advertise any individual or individuals.

{*283} Under the conditions set forth above, we answer your question in the affirmative.