Opinion No. 65-175

September 7, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General James V. Noble, Assistant Attorney General

TO: Mr. Alex J. Armijo, State Auditor, Santa Fe, New Mexico

QUESTION

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May a municipality borrow money from a financial institution in order to pay insurance premiums on insurance purchased for the municipality and repay such loan in equal installments extending over a period of approximately one year.

CONCLUSION

No, but see analysis.

OPINION

{*288} ANALYSIS

Under the facts of the situation apparently presented a municipality would call for bids for insurance for liability, workmen's compensation and other insurance which it was authorized to carry. Apparently, premiums therefor were in excess of cash available for payment of such premiums at the time the policies were purchased. In order to finance the purchase of the insurance, an agreement is entered into with the bank which then would advance the amount of premiums due in consideration of the execution by the city of a note or notes in the principal amount of such premiums paid, together with service charges, all payable in equal monthly installments over a period of approximately one calendar year. Further, all return premiums and all losses which are or might become payable under the policies are assigned to the bank to insure payment of the note and the bank is authorized, in the event of a default in payment of any installment, to cancel the policies, credit the unearned premium to the balance due and hold the municipality liable for any balance due thereafter. The debt appears to be an express obligation which entitles the bank unconditionally to receive from the municipality the money consideration expressed in the agreements and notes, and, therefore, a pledge of the general faith and credit of the municipality with a consequent right in the bank to look to the general taxing power for payment.

Article IX, Section 12 of the Constitution of New Mexico prohibits a municipality from contracting a debt except by an ordinance which may not be repealed until the indebtedness is fully paid or discharged; which specifies the purpose for which the

funds to be raised shall be applied; and which shall provide for a tax levy not to exceed twelve mills on all taxable property within the municipality sufficient to pay the interest and principal of the debt within fifty years. The debt shall not be incurred until it has first been submitted to a vote of the qualified electors within the municipality and has received a favorable vote of a majority of those voting on the question. This section was recently amended, but the amendment does not affect any question herein raised. Other constitutional provisions which need to be considered are concerned with limits of indebtedness which may be incurred by a municipality. Therefore, within constitutional limitations the debt incurred to the bank for the purpose of paying premiums cannot be legally incurred except by an ordinance, irrepealable until the debt is paid in full together with interest if any; which shall specify the purpose for which the proceeds of the debt are to be used; and which shall provide for a tax levy, not to *{*289}* exceed twelve mills to pay the indebtedness. Additionally, the creation of the indebtedness must be approved by a majority of the qualified electors within the municipality voting upon it and the indebtedness so created must not create a total indebtedness of the municipality in excess of constitutional limits. Under the facts presented, none of these constitutional qualifications or requirements have been met.

It also is a well-known rule that municipalities only have such authority as is expressly or by necessary implication granted to them by the constitution and laws of the State and no authority for entering into the indebtedness here being considered is found under the constitution or laws of New Mexico. It is, therefore, our opinion that the so-called premium servicing agreement and note of a municipality whereby an obligation is created to a financial organization is invalid.