

Opinion No. 65-195

October 11, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Frank Bachicha, Jr., Assistant Attorney General

TO: Mr. H. C. Pannell, President, New Mexico Junior College, 106 East Taylor, Hobbs, New Mexico

QUESTION

QUESTION

Is it legal for the New Mexico Junior College to borrow funds from Lea County (County Commissioners) to pay operating expenses, said loan to be repaid when the first tax collections are made?

CONCLUSION

No.

OPINION

{*316} ANALYSIS

The Junior College Act is contained in Sections 73-33-1 to {*317} 73-33-20, N.M.S.A., 1953 Compilation, (P.S.). The duties and powers of the junior college board are specified in Section 73-33-9, (P.S.), Supra, which reads as follows:

"73-33-9. BOARD DUTIES. -- A. It shall be the duty of the junior college board to determine financial and educational policies of the college. The board shall provide for the management of the junior college and execution of these policies by selecting a competent president for the college, and upon his recommendation shall employ other administrative personnel, instructional staff, or other personnel, as may be needed, for the operation, maintenance, and administration of the college.

"B. The college board shall have the power to fix tuition and fee rates for resident and nonresident students of the district, to accept gifts, to accept federal aid, to purchase, hold sell, and rent property and equipment, and to promote the general welfare of the institution for the best interest of educational service to the people of the junior college district."

Nowhere in that section, or in any other for that matter, is the Board given specific authorization for borrowing money for operational expenses from either a private individual, a state agency or a political subdivision. On the contrary, Section 73-33-14,

supra, specifies the procedures to be followed for acquiring funds for the operation of a junior college, by a special tax levy authorized pursuant to an election within the district. Naturally, we realize that the present inquiry has arisen because the collections under the first tax levy authorized have not started to come in and that the actual operation of the college has commenced and consequently debts have been incurred. Unfortunately, however, this fact may not now be considered.

Because it is sought to borrow from a political subdivision of the state, to wit, a county, we must look not only to one side of the coin but to both. In other words, we must determine not only whether the junior college is authorized to loan such funds. A negative reply to either question will necessarily preclude use of the contemplated transaction for raising funds.

Notwithstanding the fact that Section 73-33-20, supra, directs that the Junior College Act is to be liberally construed to effect its purposes, such colleges are still creations of the legislature and therefore must be held to have only such powers as are expressly or impliedly granted thereto by the legislature. Since provision is made for obtaining funds for the operation of the college, it would not appear that any implied power could be said to have been given the Board for acquiring money in any other manner, except perhaps by gift.

In our review of the statutes relating to counties (Chapter 15 "Counties," N.M.S.A., 1953 Compilation and applicable portions of Chapter 11, "Public Finances," N.M.S.A., 1953 Compilation) we have not found specific authority granted to a county to loan its public money. It is generally said that a county has only such powers and can perform only such duties as are expressly or impliedly conferred or imposed upon it by constitutional or statutory provision, and that it would have only the implied powers to do those acts which were necessary to enable it to exercise its express powers or to accomplish the objects for which it was created. See 20 C.J.S. 802, 803, § 49 "Counties," and **Williams v. Wylie**, 60 S.E. 2d 586, 217 S.C. 247. This case also held that a reasonable doubt as to the existence of a particular power of the governing board of a county must be resolved against the board.

The extent of power granted to counties for disposition of surplus {*318} funds seems to be set forth specifically in Section 11-2-7, N.M.S.A., 1953 Compilation which states in pertinent part, as follows:

"11-2-7. DEPOSIT AND INVESTMENT OF FUNDS. -- . . . County, city or town treasurers, by and with the advice and consent of their respective boards of finance charged with the supervision and control of the respective funds, shall have the power to invest all sinking funds or moneys remaining unexpended from the proceeds of any issue of bonds or other negotiable securities of any county, city, town or school district which are now or may hereafter by law be entrusted to their care and custody and **all moneys not immediately necessary for the public uses of such counties**, cities, towns or school districts in bonds or negotiable securities of the United States of America, the state of New Mexico, or of any county, city, town or school district of New

Mexico, if such city, town or school district has a taxable valuation of real property for the last preceding year of at least one million dollars and shall not have defaulted in the payment of any interest or sinking fund obligation or failed to meet any bonds at maturity at any time within five (5) years last preceding."

Any implied power to loan county funds, as sought to be done in this instance, would probably arise from the above language. However, we do not believe that even a liberal reading thereof would permit a finding that such an implied power exists. Besides this, Article IX, Section 14 of the New Mexico Constitution prohibits a county from directly or indirectly lending or pledging its credit.

Considering the absence of any express or implied statutory or constitutional authorization to counties of New Mexico to lend their monies, as contemplated here, it is our opinion that a loan of Lea County funds to the New Mexico Junior College would not be legal.