

Opinion No. 65-41

March 5, 1965

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

TO: Honorable E. C. Serna, District Attorney, Sixth Judicial District, P.O. Box 1025, Silver City, New Mexico

QUESTION

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1. May the Board of County Commissioners of Grant County enter into a contract with the holder of a certificate of public convenience and necessity for the furnishing of ambulance service on a county wide basis for indigent persons?
2. If the answer to Question No. 1 is in the affirmative, may a term of such contract extend for a period of two years?

CONCLUSION

1. Yes.
2. Yes, but see Analysis.

OPINION

{*70} ANALYSIS

Your letter of February 26, 1965 requesting this opinion advised us, inter alia, that four bid proposals have been received by the Grant County Board of Commissioners, the lowest of which has two hundred eighty dollars (\$ 280.00) per month, to cover ambulance services for indigents.

The power of the Board of County Commissioners to enter into a contract is evident under the authority granted by Section 15-36-1, N.M.S.A., 1953 Compilation, if the purposes therefore are otherwise lawful. An early predecessor to Section 15-36-1, i.e., Comp. Laws 1897, Sec. 651, containing practically identical language was construed by our court in **Agua Pura Co. v. Mayor**, 10 N.M. 6. 21-22, 60 P. 208, where it was said:

"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

powers 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 acts. An express authority may be general as well as particular. . . ."

It is to us clear that the furnishing of ambulance service to indigents by the county, although through contract with a private enterprise, falls within the broad classification of Section 15-36-1 (Fourth), supra, which reads as follows:

"15-36-1. General powers. -- Each organized county in this state shall be a body corporate and politic, and as such shall be empowered for the following purposes:

. . . .

Fourth. **To make all contracts** and do all acts in reference to the property and concerns **necessary to the exercise of its corporate or administrative powers.**

. . . ." (Emphasis supplied)

Article IX, Sec. 14, New Mexico Constitution is pertinent to the present inquiry. It reads as follows:

{*71} "Sec. 14. (Aid to private enterprise.)

Neither the state, nor any county, school district, or municipality, except as otherwise provided in this Constitution, shall directly or indirectly lend or pledge its credit, or make any donation to or in aid of any person, association or public or private corporation,, or in aid of any private enterprise for the construction of any railroad; **provided, nothing herein shall be construed to prohibit the state or any County or municipality from making provision for the care and maintenance of sick and indigent persons.**" (Emphasis supplied).

On the basis of the foregoing it is our opinion that the proposed contract may be entered into by the Board consistent with the powers granted the county to "make all contracts . . . necessary to the exercise of its corporate or administrative powers" and to make "provision for the care and maintenance of indigent persons." However, we do not hereby voice an opinion regarding the reasonableness of the proposed contract provisions since these necessarily involve careful consideration of facts and circumstances a duty which must be exercised by the Board of County Commissioners, as the governing body of the county.

In discussing your second question we begin with the general proposition that "a county is not bound by a contract beyond the scope of its powers or foreign to its purposes, or which is outside the authority of the officers making it." See 20 C.J.S. 1006, § 174.

There is no specific statute in this State which would restrict the term of any contract which may be executed by a Board of County Commissioners in behalf of the county. However, there are certain statutes and basic principles of law which bear upon this issue and will provide the answer thereto.

First of all there exists the general rule that contracts which extend beyond the term of the existing board **which tie the hands** of the succeeding board and deprive it of its proper powers, are void as contrary to public policy. See 20 C.J.S. 1009, 1010, § 176. As with any general rule there exist exceptions, in this instance consisting of necessity, good faith and public interest. Second, an important restriction upon county indebtedness is found in Section 11-6-6, N.M.S.A., 1953 Compilation, pertinent portions of which read as follows:

"11-6-6. Bateman Act -- Indebtedness of county, municipality, and school district limited to collections for same year -- Excess void -- Penalty for violation. -- After March 12, 1897, it shall be unlawful for any board of county commissioners . . . for any purpose whatever to become **indebted or contract** any debts of any kind or nature whatsoever during any current year which, at the end of such current year, is not and cannot then be paid out of the money actually collected and belonging to that current year . . ."
(Emphasis supplied)

This section would appear to render void a contract which would bind the county to an indebtedness which could not be paid out of current funds. However, such a restriction would not necessarily prohibit the execution of a contract for a period of time longer than that ending during the current year, if the same contained a provision which would effectively limit the liability of the county thereunder to the current year, for which moneys were available for that purpose.

In Attorney General Opinion No. 64-74 dated June 2, 1964, it was held that "a state public body, in the absence of statutory power providing otherwise, may properly {^{*72}} enter into a lease contract only for such period of time as there exists current legislative appropriations or other funds available to pay lease rental obligations falling due under the terms of the lease agreement." Essentially the basis for such a conclusion related to the principle that contracts may not be executed which would obligate the state or an agency thereof to pay sums beyond those amounts currently appropriated or which would bind future legislatures to provide appropriations for payments under the contracts. The Opinion also recognized, however, that a contract could be entered into covering a longer period of time, but only if it expressly provided that no obligation would exist to continue such contract or to pay sums thereunder if legislative appropriations were not available, or if the legislature subsequently restricted, reorganized or abolished the contracting agency. Although the Opinion does not apply specifically to counties, it is our impression that the principles of law enunciated therein apply not only to state legislative or agency action but to the governing bodies of political sub-divisions as well.

It is our opinion therefore that the contract involved in the instant inquiry may be executed for a period of two years, providing however, that it contain provisions which will prevent a violation of the Bateman Act, cited above, and which will limit the obligation of the county under the contract to the term of the present Board of County Commissioners. Although an automatic option renewal clause could also be provided.