

Opinion No. 65-53

March 22, 1965

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

TO: John Arnelo, Chief, Cimarron Police Department, Village of Cimarron, New Mexico

QUESTION

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May the Village of Cimarron purchase a police car during the fiscal year ending June 30, 1965, and pay for it from funds budgeted for the fiscal year ending June 30,

CONCLUSION

No.

OPINION

{*90} ANALYSIS

The Bateman Act, Section 11-6-6 through 11-6-12, N.M.S.A., 1953 Compilation, provides the answer to your inquiry. The first section of this Act sets forth the requirements thereof with respect to indebtedness of counties, municipalities and school districts, thus we quote 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, city council, town trustees, board of education, **board of trustees**, or board of school directors of any school district, **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 {*91} then be paid out of the money actually collected and belonging to that current year**, and any and all kind of indebtedness for any current year which is not paid and cannot be paid, as above provided for is hereby declared to be null and void, and any officer of any county, city, town, school district or board of education, who shall issue any certificate or other form of approval of indebtedness separate from the account filed in the first place and who shall, at any time, use the fund belonging to any current year for any other purpose than paying the current expenses of that, or who shall violate any of the provisions of this section, shall be deemed guilty of a misdemeanor and upon a conviction thereof shall be fined not less than one hundred (\$ 100) nor more than one thousand dollars (\$ 1,000) or be

confined in the county jail for a period of not more than six (6) months or by both such fine and imprisonment, in the discretion of the court trying the case." (Emphasis added)

The applicability of the Bateman Act to villages was decided in the case of **Campbell v. Village of Green Tree**, 59 N.M. 255, 282 P.2d 1101, where the court said:

"It is inconceivable that the Legislature having prohibited the various bodies, specifically enumerated in Section 15, supra, from incurring indebtedness which could not be paid out of money collected for that current year would exempt villages. It is apparent that the words 'board of trustees' appearing in this section of the act were simply placed in an unusual position. But, we believe, and so hold, that it was the intention of the Legislature to use such words in relation to municipal corporations of **whatsoever** kind and class referred to in . . . of the act, otherwise such words would be meaningless."

It is to be noted that the prohibition of Section 11-6-6, supra, relates not only to becoming indebted but also to the contracting of debts which are not or cannot be paid out of money actually collected and belonging to the current year. Information furnished to us reveals that the Village of Cimarron has no money actually collected and belonging to the current year which could be used to pay for the police car. Therefore, the contracting of such a debt in the present fiscal year with the knowledge that it will not and cannot be paid until after the budget is approved and until money is obtained, belonging to the next fiscal year, would be a direct violation of the above mentioned Section 11-6-6. We realize that the present situation in Cimarron may constitute an emergency; and, thus we suggest that the possibility of entering into a lease-purchase agreement with a local automobile dealer be looked into, since such lease-purchase agreements are, under Section 6-5-11, N.M.S.A., 1953 Compilation (P.S.), specifically exempt from the provisions of the Bateman Act. However, it is our impression that in any event money must be currently available and that budget authorization must exist for making the lease rental payments falling due and pertaining to the current year, under such a lease-purchase agreement.