

Opinion No. 65-75

May 5, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Roy G. Hill, Assistant Attorney General

TO: Mr. E. H. Williams, Jr., District Attorney, Third Judicial District, County Courthouse, Las Cruces, New Mexico

QUESTION

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1. Can the Board of County Commissioners acquire land lying in the same block and adjacent to the County Courthouse out of cash surpluses, or must this be submitted to the taxpayers and be paid out of a bond issue?
2. We would like to know the answer to the same question only pertaining to purchase of Bureau of Land Management land for: (a) recreation land; (b) land for industrial park development, if the Bureau of Land Management authorizes the purchase of land for this use.

CONCLUSIONS

1. See analysis.
2. See analysis.

OPINION

{*130} ANALYSIS

By virtue of Section 15-36-1, N.M.S.A., 1953 Compilation, a county has the power to purchase and hold real property for the use of the county. This power of the county must be exercised through the Board of County Commissioners. Therefore, any contemplated purchase of real property must be for the use of the county.

Assuming that the contemplated purchase is for the use of the county, Section 11-2-57 N.M.S.A., 1953 Compilation (P.S.) provides a way to accomplish such a purchase without submitting a bond issue to the taxpayers. Subsection H of Section 11-2-57, supra, provides that the Local Government Division of the State Department of Finance and Administration may:

"With written approval of the director of the department of finance and administration and the attorney general, increase the total budget of any local public body in the event

such local public body undertakes an activity, service, project or construction program which was not contemplated at the time the final budget was adopted and approved and which activity, service, project or construction program will produce sufficient revenue to cover such increase in the budget or such local public body has surplus funds on hand not necessary to meet the expenditures provided for in the budget with which to cover such increase in the budget."

This subsection has reference to a local subdivision as defined in Section 11-2-56 N.M.S.A., 1953 Compilation (P.S.) A county is specifically included within this definition. Since the Local Government Division can approve changes in a county budget during the time it is operative, a purchase from surplus funds would not violate the requirements of Section 15-51-6 N.M.S.A., 1953 Compilation. This section requires that any revenues in excess of the approved and certified budget be applied on the budget estimate for the next succeeding year. It is, therefore, our conclusion that the Board of County Commissioners may acquire land in the same block and adjacent to the county courthouse out of cash surpluses. However, the cash surpluses to be used must not contain any money which was borrowed for another {**131*} purpose. Article IX, Section 9, of the Constitution of New Mexico provides that any money borrowed by a county shall be applied to the purpose for which it was obtained or to repay the loan and for no other purpose.

Since there are no limitations in Subsection H of Section 11-2-57, *supra*, what was said above regarding the ability of the county to purchase from cash surpluses also has application to your second question. Insofar as the county's power to purchase land for recreational purposes is concerned, there is specific statutory authority for such a purchase. Section 6-4-1 N.M.S.A., 1953 Compilation, provides that Sections 6-4-1 to 6-4-9 apply to counties. Section 6-4-2, N.M.S.A., 1953 Compilation (P.S.) specifically provides that a county may acquire land for playgrounds, recreation centers, zoos and other public recreational purposes. Therefore, if a county has the proper cash surpluses and complies with the requirements of Subsection H of Section 11-2-57, *supra*, it may purchase land for recreational purposes out of such surpluses.

Most of what has been said above has application to part (b) of your second question. There is no specific statutory authority, however, regarding the purchase of land for industrial park development. The power to acquire land for this purpose would have to come from Section 15-36-1, *supra*, which grants the power to acquire land for the use of the county. This same section also provides that a county may sell real estate owned by the county if such sale be deemed conducive to the interests of the inhabitants.

Under the broad language of Section 15-36-1, *supra*, it appears that a county may purchase land for industrial park development and in turn sell the property in order for the development to be realized if such a transaction would be for the benefit of the inhabitants of the county. It appears that so long as the land purchased for industrial park development is sold at a fair market price, the operation of such a project will not run afoul of Article IX, Section 14, of the Constitution of New Mexico which prohibits a donation to or in aid of any person, association or public or private corporation. The

language of Article IX, Section 14, supra, was considered by our Supreme Court in **Village of Deming v. Hosdreg Company**, 62 N.M. 18. The interpretation of Section 14 by the Court in that case convinces us that the contemplated industrial park development would not violate Article IX, Section 14, supra.