

Opinion No. 66-01

January 4, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Senator I. M. Smalley, 501 West Pine Street, Deming, New Mexico

QUESTION

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How is the 1964 proviso added to Article II, Section 10 of the Constitution to be construed?

CONCLUSION

See Analysis.

OPINION

{*2} ANALYSIS

Article IX, Section 10 of the New Mexico Constitution was amended effective November 3, 1964, for the purpose of permitting bond moneys to be used for the purpose of remodeling and making additions to necessary public buildings. Prior to the amendment the county was limited, insofar as public buildings were concerned, to the use of bond moneys for the purpose of erecting necessary public buildings.

The 1964 amendment also added a proviso which is the subject matter of your question. This proviso reads as follows:

"Provided, however, that no moneys derived from general obligation bonds issued and sold hereunder, shall be used for maintaining existing buildings and, if so, such bonds shall be invalid."

This provision is designed to put the county on notice as to what it cannot do with bond moneys. Actually it is a corollary to Article II, Section 9. The provision does not invalidate bonds in the hands of the **bondholders**. Such a result would be absurd, and it is elementary that an absurd intention is not to be attributed to the legislature.

If the provision was interpreted to invalidate the bonds in the hands of the bondholders, the county could issue and sell a million dollars worth of bonds and then render the bonds worthless by spending one dollar on maintaining existing buildings. Now even

though public officials are presumed to act in accordance with all laws, through inadvertence the dollar might be so spent.

The purpose for which the bond moneys are to be used must be set out in the resolution and publication thereof, and if one such specified purpose was maintaining existing buildings, the bonds would be invalidated at that point and could not be issued even if a buyer had been selected.

1965

65-241

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