

Opinion No. 66-26

March 2, 1966

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

TO: Mr. Lalo Garza, Village Attorney for Tularosa, P. O. Box 307, Alamogordo, New Mexico

QUESTION

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(1) May an election on the issuance of revenue bonds to construct a municipal utility be held when the local governing body has approved such an ordinance by an affirmative vote of three-fourths of all the members of the governing body?

(2) May such an election be held prior to a vote of the governing body on the issue?

CONCLUSIONS

1. No.

2. No.

OPINION

{*29} ANALYSIS

We will answer your questions together, pointing out initially that Laws 1965, Chapter 21, amended then Section 14-39-8 N.M.S.A., 1953 Compilation to broaden the definition of "municipal utility." As amended, it included swimming pools. This bill became effective February 26, 1965.

{*30} The 1965 Municipal Code, as originally introduced, contained a more restrictive definition of "municipal utility" and included only sewer facilities, water facilities, gas facilities or electric facilities.

Numerous amendments to the code were adopted in an attempt to make it conform with other 1965 legislation affecting municipalities.

In Laws 1965, Chapter 300, Section 14-1-2 H (the Municipal Code) an amendment to the original bill was adopted which provided that certain recreational facilities, including swimming pools, were within the category of municipal utilities.

Section 14-30-1, N.M.S.A., 1953 Compilation (P.S.) authorizes a municipality to issue revenue bonds for the purpose of "acquiring a municipal utility."

Section 14-30-4, N.M.S.A., 1953 Compilation (P.S.), the statute which sets forth the method of adopting the necessary ordinance authorizing the issuance of such revenue bonds, states as follows:

"Ordinance authorizing revenue bonds -- Three-fourth majority required. -- A. At a regular or special meeting called for the purpose of issuing revenue bonds as authorized in section 14-30-1 New Mexico Statutes Annotated, 1953 Compilation, the governing body may adopt an ordinance that:

(1) declares the necessity for issuing revenue bonds; and

(2) authorizes the issuance of revenue bonds by an affirmative vote of three-fourths of all members of the governing body.

B. If a majority of the governing body, but less than three-fourths of all the members, vote in favor of adopting the ordinance authorizing the issuance of revenue bonds, the ordinance is adopted but shall not become effective until the question of issuing the revenue bonds is submitted to a vote of the qualified electors for their approval at a special or regular municipal election. If an election is necessary, the election shall be conducted in the manner provided in sections 14-8-1 through 14-8-17 New Mexico Statutes Annotated, 1953 Compilation. Notice of the election shall be given as provided in section 14-8-2 New Mexico Statutes Annotated, 1953 Compilation."

It certainly appears to us that the legislature saw no necessity and provided no machinery for an election on the issuance of revenue bonds when the necessary three-fourths vote of the governing body had been obtained. Nor did the legislature provide any authorization for an election prior to action by the governing body.

This is understandable when we recognize that revenue bonds issued under the sections previously mentioned are not general obligations of the municipality and do not result in the levy of an assessment against the taxable property in the municipality. Such bonds are collectible only from the pledged net income of the particular municipal utility. Section 14-30-5, N.M.S.A., 1953 Compilation (P.S.).