Opinion No. 67-145

December 18, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Board of County Commissioners Taos County P.O. Box 698 Taos, New Mexico

QUESTION

FACTS

The Taos County Commissioners are now in the process of planning a complex of a county courthouse, jail, and office building as authorized by the newly enacted Sections 15-55-1 et seq., N.M.S.A., 1953 Compilation (1967 Interim Supp.). Certain questions have arisen concerning the application and construction of these sections.

QUESTIONS

1. In addition to facilities for county administration, planning, clerk, assessor, and treasurer, presently contemplated are facilities for additional public service functions in the county office building. Such functions are typified by, but not yet limited to, the following examples of neighborhood and community services: county agent, legal aid, health center, magistrate, probate judge, volunteer community service programs, welfare services, employment, job training and counseling services, relocation and rehabilitation services, remedial and noncurricular education. Does the Attorney General see any restriction to the inclusion of the above public facilities in the courthouse complex?

2. Irrespective of the specific functions involved, must the "county offices" (as distinct from the jail building and courthouse building) be built as a single structure, or may two or more separate buildings be constructed to house these offices?

3. Is there any necessity to construct all of the various component buildings of the "complex" [Line 3, HPAC/SUB for H.B. 418] on continguous county-owned land?

4. Is there any restriction to the acceptance by the county of federal or state monetary grants for the purpose of augmenting the monies now available for the project which have been derived from the sale of revenue bonds?

5. Is there any restriction which would preclude the inclusion in the complex of limited facilities for outdoor public recreation, such as parks, landscaping, playgrounds, and related amenities?

CONCLUSION

1. See analysis.

2. See analysis.

3. See analysis.

4. See analysis.

5. See analysis.

OPINION

*{*231}* **ANALYSIS**

In determining whether facilities for the enumerated functions contained in question 1 of this opinion may be included within the complex, we view the determining factor as whether these functions serve a "county purpose". Under *{*232}* Section 15-37-15, N.M.S.A., 1953 Compilation, the county commissioners of the several counties are charged with the duty "to build and keep in repair all county buildings, and in case there are no county buildings, to provide suitable room for county purposes". The county commissioners also are given general management of the county by the terms of Section 15-37-16, N.M.S.A., 1953 Compilation, in the following terms:

To represent the county and have the care of the county property and the management of the interest of the county in all cases where no other provision is made by law.

In the case of **Agua Pura Company vs. Mayor,** 10 N.M. 6, 60 P. 208 (1900), our Supreme Court had occasion to interpret that section of the law which is now compiled as Section 15-37-16, supra. In applying this statute, in its discretion of the authority of the county commissioners, the Supreme Court stated:

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 in the words used to be sufficiently comprehensive to include the proposed acts. An express authority may be general as well as particular.

Therefore, the powers given to the county commissioners to act in the interest of the county are extremely broad. This office has consistently held this to be true. See 1953-1954 Attorney General Opinions, No. 5982; 1955-1956, No. 6490; and 1957-1958, No. 57-234. Therefore, we conclude that if the function serves a legitimate county purpose space may be provided for it within the courthouse complex.

In the **Agua Pura** case and in the later case of **In re Atchison, Topeka and Santa Fe Railroad Companies Taxes in Eddy County for 1933,** 41 N.M. 9, 63 P.2d 345 (1936) it was determined, respectively, that supplying water was a county purpose but imposing taxation to pay for state highways was not a county purpose. Since neither of these decisions dealt directly with a topic involved in the functions set forth in question 1 of this opinion and since neither of the cases laid down a general rule which may be applied to the functions in question here, we must turn to the decisions of other states.

Initially, we conclude certain of the functions which obviously amount to county purposes such as the county agent, see Sections 45-1-4 through 45-1-9, N.M.S.A., 1953 Compilation; magistrate; and probate judge. These functions may be housed in any manner as may seem suitable to the county commissioners under their grant of power contained in Section 15-37-15, supra.

The term "county purposes" has been defined as being those purposes which promote the welfare of the county as a whole and its citizens, **Johnson v. Donham,** 191 Ark. 192, 84 S.W. 2d 374. It has also been said that the term county purposes means such enterprises as would not advance the wants and demands of the community independent of public aid. Therefore, the building of courthouses, jails, poorhouses and common roads and bridges by which they are made accessible to the people are "county purposes", while hotels and mercantile, trading, banking, and manufacturing establishments would not be, **Louisville and N. R. Company vs. Davidson County,** 33 Tenn. (1 Snead) 637, *{*233}* 62 Am. Dec. 424. Under this general statement of the test for "county purpose", it is the opinion of this office that the functions pertaining to legal aid; a health center; welfare services; employment; job training and counseling services; and relocation and rehabilitation services would be of such a nature as to provide a primary benefit to the county in which they are situated. Therefore, they are county purposes and may be housed by the county.

As to functions relating to community service programs and remedial and noncurricular education, specific information has not been made available to this office. Therefore, only the most generalized opinion can be made as to these functions. Certain volunteer community service programs, such as volunteer fire departments may well be considered to constitute activities amounting to a "county purpose". Thus, facilities may be provided for activities which fall into this classification. As for remedial and noncurricular education functions we point out that the State Board of Education is given the power to determine public school policy and vocational educational policy and has control, management and direction of all public schools pursuant to the authority and powers as provided by law, Constitution of New Mexico, Article XII, Section 6. The New Mexico Public School Code, Chapter 77, New Mexico Statutes Annotated, 1953 Compilation (1967 Interim Supp.), sets forth the areas in which the State Board of Education has the power to control, manage and direct all public schools. Any remedial and noncurricular education functions which may fall within the final control and direction of the State Board of Education would necessarily be a state, as opposed to a county, purpose and should not be provided facilities.

Under the terms of Section 15-55-3, supra, county commissioners of certain counties may issue bonds in a certain amount "for the purpose of constructing a complex of a courthouse, jail and county office building including the cost of land, equipment and professional fees, to be paid back from the proceeds of a county gross receipts tax".

In interpreting a statute the intent to be first sought is the meaning of the words used, and when they are free from ambiguity and doubt and expressed plainly, clearly and distinctly the sense of the legislature, no other means of interpretation should be resorted to. **George v. Miller and Smith,** 54 N.M. 210, 219 P.2d 285. Therefore, there is no basis for construction of a statute where the legislative language and intent is plain **Carper v. Board of County Commissioners of Eddy County,** 57 N.M. 137, 255 P.2d 673; **Hendricks v. Hendricks,** 55 N.M. 51, 226 P.2d 464.

We are of the opinion that the above quote from Section 15-55-3, supra, contains no ambiguous language requiring construction. The statute provides for the construction of a complex or group of buildings consisting of a courthouse, a jail and county office building. The statute contains no language which would indicate that the legislature intended that more than one county office building be constructed in this complex. Therefore, in answer to your question 2 we are of the opinion that the statute contemplates that up to three buildings may be constructed, but only one structure is to be built for use as a county office building.

In your question 3 you have asked whether all of the various component buildings of the "complex" must be constructed upon contiguous, county-owned land. Our research has revealed no court decisions construing the term "complex" as applied to a grouping of buildings. However, we note that **Webster's New International Dictionary,** 2nd Ed., Unabridged, defines complex as follows:

Complex la. An assemblage *{*234}* of related things; a whole made up of complicated or interrelated parts; an intricate combination; as, a complex of causes. b. A special conjunction of various contributing factors, elements, qualities, etc.: as, the environmental complex best adapted to a species.

Therefore, a complex of buildings related to county governmental purposes could also be said to be an assemblage or collection of buildings. In order that this may be accomplished it is apparently necessary that the buildings must comprise some physical grouping which would render them, within reason, closely accessible one to another. So long as the buildings of the complex are closely, within reason, accessible one to another we see no reason that they be built upon contiguous, county-owned land.

As we have pointed out in answer to your question 1, boards of county commissioners have been granted broad powers under the terms of Sections 15-37-15 and 15-37-16, supra. We find no statutory provision which would prohibit county commissioners from accepting state or federal grants for the purpose of augmenting the monies now available for the project which have been derived from the sale of revenue bonds. We are of the opinion that this is a situation in which the county commissioners are

authorized to represent the interest of the county by accepting state or federal grants in the absence of any legal prohibition, Section 15-37-16, supra.

In answer to your last question we note that Section 6-4-1, et seq., N.M.S.A., 1953 Compilation provides the means by which counties or municipalities or counties and municipalities acting jointly may construct public recreation areas such as parks, playgrounds and related facilities. Since a specific plan has been laid down by the legislature for the creation of such facilities, it is this plan which must be followed. Additionally, the authorization of Section 15-55-1, et seq., supra, is only for the construction of a complex for a county courthouse, jail and office building. While landscaping of the area surrounding these buildings may well be considered as a proper part of the construction of the buildings, we are of the opinion that construction of public recreation facilities such as playgrounds and parks would definitely fall outside the scope of the authority granted by the bonding section.

By: Paul J. Lacy

Assistant Attorney General