

Opinion No. 67-147

December 26, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. Reginaldo Espinoza Member New Mexico State Highway Commission P.O.
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QUESTION

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1. Can the State Highway Commission approve the sale of state highway debentures to improve or build secondary roads when the State of New Mexico will furnish twenty percent of the cost and the Federal Economic Development Administration will furnish eighty percent of the cost?
2. What is the procedure for repayment of these debentures?

CONCLUSIONS

1. Not unless the legislature specifically approves the issuance of debentures for this purpose.
2. See analysis.

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{*237} ANALYSIS

Issuance and sale of state highway debentures is authorized by Sections 64-26-59 and 64-26-90, N.M.S.A., 1953 Compilation. Section 64-26-65, N.M.S.A., 1953 Compilation, provides for the use of moneys derived therefrom as follows:

"The funds derived from the sale of the said debentures shall be used by the state highway commission for the purpose of constructing and improving highways **on the system of state highways** including the cost of obtaining rights of way for state highways, and to defray engineering costs incidental therewith, **and for no other purpose.**" (Emphasis added).

Section 55-1-4, N.M.S.A., 1953 Compilation, defines the phrase "state highway" as follows:

"The words, 'state highway', as used in this act shall include any highway declared to be a state highway by an act of the legislature, or designated as such by the state highway engineer."

Then looking at Section 55-2-29, N.M.S.A., 1953 Compilation, we see that it provides as follows:

"The state highway commission shall have full control over all roads designated by the said commission as state highways, or created as state highways by acts of the legislature, and the costs of maintenance thereof shall be paid by the state. . . ."

Thus if a secondary road is properly designated as a state highway, then debenture moneys can be used for its repair if the legislature authorizes the use of debenture money for this purpose. Legislative approval is required because Laws 1967, Chapter 2 (General Appropriation Act) contains the following language:

"Notwithstanding the provisions of Section 64-26-90, the commission shall issue no debentures without specific prior approval of the legislature."

While the constitutionality of incorporating such a provision in the General Appropriation Act may be questionable, we must, until it is challenged in court, presume that it is constitutional.

Repayment of debenture money is governed by Section 64-26-60, N.M.S.A., 1953 Compilation. This section provides as follows:

"The treasurer of the state of New Mexico shall keep a record of all such debentures issued and from the proceeds of the collection of the taxes and fees pledges to pay the same under the authority hereof he shall first set aside each month in a separate fund a sufficient amount to pay the interest accruing each month on said debentures, and during the twelve months next preceding the maturity of each series of such debentures he shall set aside from said proceeds sufficient money to provide for the payment of the principal thereof at maturity."

By: Oliver E. Payne

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