

## **Opinion No. 67-84**

June 26, 1967

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Luis L. Fernandez, Chief Local Government Division Department of Finance and Administration Santa Fe, New Mexico

### **QUESTION**

#### QUESTION

May the town of Hagerman, an incorporated municipality, borrow money from the Farmers Home Administration, a federal agency, to purchase existing water facilities from the federal government?

#### CONCLUSION

See analysis.

### **OPINION**

#### **{\*121} ANALYSIS**

The town of Hagerman wishes to purchase property, pipeline, and a pump station offered by the Utilization and Disposal Service of the General Services Administration, a federal agency. The property and water system were used by the federal government for a missile site near the town of Hagerman.

Section 14-26-1, N.M.S.A., 1953 Compilation allows municipalities to acquire water facilities including wells, pumps, pipes, and right-of-way. Section 14-36-6, N.M.S.A., 1953 Compilation gives municipalities the power to accept or borrow funds from the United States or any of its agencies for any purpose authorized by the laws of this state. {\*122} We therefore conclude that there is statutory authority for the town of Hagerman to borrow money from the Farmers Home Administration to acquire the water facilities of the abandoned missile site. It will be seen however, that the type of indebtedness incurred by the municipality for this purpose is limited.

New Mexico has two constitutional provisions which are relevant in this case. The first provision is Article IX Section 13 which provides that a city cannot become indebted for an amount exceeding 4% of the value of the taxable property within the city. This section, however, contains a proviso excluding debts incurred for the construction of water systems, and therefore this section of our constitution is inapplicable in this case.

The second constitutional provision relevant here is Article IX Section 12 of the New Mexico Constitution. This section provides that a municipality cannot incur a debt unless the question of incurring the debt has been submitted to the voters in either a general or special election. The key word in this section of our constitution is the term "debt." In **Seward v. Bowers**, 37 N.M. 385, 24 P2d 253 (1933), the New Mexico Supreme Court held that revenue bonds issued by the town of Springer, New Mexico, for the construction of a water system did not create a debt within the constitutional meaning of that term in Article IX Section 12 of our constitution. In **Seward v. Bowers**, supra, our Supreme Court reasoned that if the obligation is to be paid out of a special fund and the municipality is not liable to pay the obligation if the special fund is insufficient, then a debt is not created within the meaning of that term in Article IX Section 12 of our constitution. This does not mean, however, that the town of Hagerman can now issue revenue bonds to acquire a water system without submitting the issue to the voters at either a general or special election. Section 14-22-2, N.M.S.A., 1953 Compilation of our municipal code provides in part that no municipality shall acquire a municipal utility, which would include a water system, from funds acquired from the issuance of revenue bonds until the question of acquiring the utility is submitted to the voters at either a general or special municipal election.

From the foregoing it is the opinion of this office that the town of Hagerman may borrow money from the Farmers Home Administration to acquire a water system. However, the note or certificate of indebtedness given to the Farmers Home Administration must provide that it will be paid solely from the revenues produced by the water system without incurring any liability to pay the indebtedness out of the general funds of the municipality unless the voters of the municipality have approved of the indebtedness in a general or special election.

By: Gary O'Dowd

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