

Opinion No. 68-78

July 29, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. William Henry Mee Attorney New Mexico Legislative Council 334 State Capitol Santa Fe, N. M. 87501

QUESTION

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May the Artesia-Eagle Draw Flood District incur any long term indebtedness for flood control purposes under Sections 15-50-1 to 15-50-17, N.M.S.A., 1953 Compilation?

CONCLUSION

See analysis.

OPINION

{*127} ANALYSIS

In Attorney General Opinion 66-20, dated February 10, 1966, this office pointed out that counties in New Mexico have been given express authority to contract. See Section 15-36-1, N.M.S.A., 1953 Compilation. It was further pointed out that it is generally settled today that one board of county commissioners can bind by contract succeeding boards of county commissioners if the obligation is entered into in good faith. The same rule is applicable to county flood commissioners. See Section 15-50-3, N.M.S.A., 1953 Compilation.

The only question left to answer is whether there is any statutory provision prohibiting county flood commissioners from entering into contracts which are to be fulfilled over a period of several years. As will be seen below, we see no prohibition against county flood commissioners incurring a long term indebtedness for flood control purposes if such contract is entered into in good faith and pursuant to the county flood commissioners' statutory powers.

In reaching this conclusion, it is necessary to review the statutory powers of the county flood commissioners. These statutory powers aid us in achieving the true intent of the legislature when enacting Sections 15-50-1 to 15-50-17, N.M.S.A., 1953 Compilation. And it is the purpose of all statutory construction to arrive at legislative intent. **State v. Thompson**, 57 N.M. 459, 260 P.2d 370 (1953). Section 15-50-3, N.M.S.A., 1953 Compilation authorizes flood control commissioners to construct long term projects such as dams, ditches, dykes and other structures or excavations as may be necessary to

control flood water and protect life and property in their counties against loss and damage. They are authorized to enter into contracts to achieve this purpose. Clearly some of these projects will take longer than one year to be constructed and paid for. Thus it obviously was the intention of the legislature to enable the county flood commissioners to contract for periods exceeding one year to carry out their statutory powers under Section 15-50-3, supra.

Our attention has been directed to Section 15-50-6, N.M.S.A., 1953 Compilation which provides that indebtedness is not to be incurred {*128} by county flood commissioners in excess of the amount of the annual tax levy. This office construed a similar provision contained in the Bateman Act (Section 11-6-6, N.M.S.A., 1953 Compilation) in Attorney General Opinion 66-20. supra.

The Bateman Act provides that county commissioners may not become indebted or contract any debts during any current year which, at the end of such current year, is not and cannot then be paid out of the money actually collected and belonging to that current year. In Attorney General Opinion 66-20, supra, we said that this means that a county may not enter into a contract to pay a certain sum of money during the current year which cannot be paid for during that year. It was the opinion of this office that this section of the New Mexico Statutes did not prohibit a county from entering into a long term lease. The reason is simple, a lease does not obligate the county for the total lease amount in any one year. Therefore no debt is contracted for in any one year that cannot be paid in that year.

The same reasoning is controlling when considering Section 15-50-6, supra. So long as the county flood commissioners do not bind the county to a debt for which the installment due during any one year cannot be paid in that year, the debt is binding and does not violate Section 15-50-6, supra.

By: Gary O'Dowd

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