

## Opinion No. 69-32

April 21, 1969

**BY:** OPINION OF JAMES A. MALONEY, Attorney General Justin Reid, Assistant Attorney General

**TO:** Senator Herbert J. Taylor, 1602 Linda Drive, Gallup, New Mexico

### QUESTIONS

#### QUESTIONS

Do the provisions of Section 73-31-1.1 N.M.S.A., 1953 Compilation authorizing the Inter-tribal Indian Ceremonial Association to issue bonds and to provide for the payment of the principal and interest thereon, also permit the Association to determine in its discretion the terms, covenants and conditions of the bonds, including the date of issuance, denomination, maturity, coupon rate or rates, call features and premium, registration, refundability, and other matters covering the general and technical aspects of the issuance of said bonds?

#### CONCLUSION

Yes.

### OPINION

#### {\*46} ANALYSIS

The pertinent language of Section 73-31-1.1 and 73-31-1.2, N.M.S.A., 1953 Compilation, is as follows:

"In addition to the powers which it may not have, the Inter-tribal Indian Ceremonial Association shall have power:

. . .

Paragraph E. To borrow money issue, bonds and to provide for the payment of the principal and interest of the same and for the rights of the holders thereof. . . .

{\*47} Nothing in this act shall be construed to authorize the Inter-tribal Indian Ceremonial Association to contract a debt on behalf of, or in any way obligate the State of New Mexico."

The Association is also incorporated under the laws of New Mexico as a non-profit corporation. Section 51-14-30, supra, provides as follows:

"A corporation has the capacity to act possessed by natural persons, but it shall have authority to perform only acts that are necessary or proper to accomplish its purposes and not repugnant to law.

Unless the articles of incorporation prescribe otherwise, a corporation has authority to: . . . (e) lease, **encumber**, convey or dispose of real and personal property; (f) enter into **obligations** or contracts and do any act incidental to the transaction of its business or expedient to the purpose stated in its articles of incorporation . . ." (emphasis added.)

While the provisions of Section 73-31-1.1 designate the Association as an official agency of the state, it is clear from a reading of the above quoted portions of the act that the legislature did not intend to give the Association power to issue general obligation bonds or revenue bonds as in the case of political subdivision of the state. Where such authority has been given, detailed provisions have been set out in the enabling legislation governing the method and terms of issuance. See, for example, the bond issuing authority for county fairs provided for in Sections 45-20-26 and following, and Sections 45-21-2 and following.

In this case, we are of the opinion that the legislature has authorized the Association to issue bonds similar to those issued by the State Fair Commission, as authorized in Sections 45-21-14 (e). The difference is that by the provisions of Sections 45-20-15 and following the State Fair Commission is given very specific directions as to the issuance and terms of their bonds. Does this make a difference?

In our opinion, it does not. The legislature has authorized the Association to issue bonds and by the terms of Section 73-31-1.1 F., has given it the authority "to perform all acts and do all things necessary and convenient to carry out the powers herein granted, or heretofore granted . . ." If this legislative authorization is to have any force and effect, it can only mean that it was intended that the Association be given the power to determine the terms, covenants and conditions of bonds which it may issue.

We would suggest that the issuance of any bonds by the Association follow generally the provisions above noted for the issuance of State Fair bonds. We further call to your attention that by the specific provisions of Section 48-18-21A, any such bond will be exempt from registration under the State Securities Act.