

Opinion No. 70-29

March 26, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: The Honorable E.H. Williams, Jr. District Attorney Third Judicial District County Courthouse, Rm. 207 Las Cruces, N.M. 88001

QUESTIONS

FACTS

Pursuant to a resolution adopted by the Board of County Commissioners of Otero County, New Mexico, the following question was presented for approval by the electorate: "Shall the County of Otero, New Mexico, issue its general obligation bonds in the total sum of \$ 250,000.00 for the purpose of securing funds for the construction of an addition to the present county hospital for Otero County, New Mexico, by constructing an addition to the present county hospital?" The electorate answered affirmatively, and some of the funds from the bond issue were expended on the construction of an addition to the present county hospital. At this time there remains a balance of funds from the bond issue. The County Commissioners desire to house the County Health Department but have no funds available for such a project other than those remaining from the general obligation bond issue.

QUESTIONS

1. May Otero County, New Mexico use the remaining balance of the general obligation bond issue funds for the construction of facilities for the Otero County Health Department, either on county hospital property or on property separate and apart from the hospital property?
2. If not, may the Health Department facilities be constructed on the existing hospital property, but separate and detached from the hospital itself?
3. If not, may the Otero County Commissioners construct an addition to the Otero County Hospital for use by the Health Department personnel?

CONCLUSIONS

1. See analysis.
2. See analysis.
3. Yes.

OPINION

{*50} ANALYSIS

Section 15-48-3, N.M.S.A., 1953 Compilation, authorizes county commissioners to issue bonds for construction, purchase and equipping of county hospitals. In addition, counties may make additions to "necessary public buildings," including county hospitals. New Mexico Constitution, Article IX, Section 10, as amended; Section 15-49-2.1, N.M.S.A., 1953 Compilation; Section 15-49-1, N.M.S.A., 1953 Compilation. Proceeds from general obligation bonds, such as those under consideration, however, may not be used for the maintenance of existing buildings. Section 15-49-2.1, *supra*. Furthermore, proceeds from such bond issues may be applied only to the specific purpose set forth in any such bond issues. Section 15-49-19, N.M.S.A., 1953 Compilation.

County commissioners are under a statutory duty to provide suitable housing for the county health department. Section 12-2-7, N.M.S.A., 1953 Compilation. The specific purpose of the bond issue in question was to construct an addition to the present county hospital, but no specific use was specified in the resolution. The remaining balance of the general obligation bond issue funds may be used only for the construction of an addition to the present county hospital but may not be used either for the maintenance of {*51} existing facilities nor for the construction of an addition to any other county building. Permitting the health department to use such an addition to the present county hospital, once it is constructed, would not be inconsistent with the above statutory provisions.

Under the specific purpose of the bond issue, construction must be in the form of an addition to the present county hospital and may not be separate and apart from the hospital. Since the bond issue was for the specific purpose of constructing an addition to the present county hospital and not for the purpose of constructing health department facilities as such, it would not be consistent for the county to use the remaining funds to construct such facilities for the specific and exclusive use of the health department. While facilities for the health department could not be separate and detached from the hospital itself if the funds in question were used for the construction, nevertheless, it would be consistent with the specific purpose of the bond issue for the county to construct an addition to the present county hospital and then to permit the county health department to use such an addition for its personnel.

By: James C. Compton, Jr.

Assistant Attorney General