

Opinion No. 71-20

February 10, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

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

QUESTIONS

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1. Will the amendment on page 3, lines 23 and 24, allow the state air pollution control agency to prevent industrial expansion or location within the state, if it believes that such industry moving into the state or expanding its facilities would violate the air quality standards adopted by the agency?
2. Does the statement of legislative intent, which authorizes municipalities to acquire, own or lease projects for the purpose of promoting industry, trade and a clean environment control over the Air Quality Control Act and the standards adopted thereunder?

CONCLUSIONS

1. No.
2. No.

OPINION

{*31} ANALYSIS

1. A copy of Senate Bill 4, which is the subject of this opinion, is attached hereto, so that the questioned sections can be studied in context.

The first question involves an interpretation of the amended statement of legislative intent (Senate Bill 4, Section 2), which expands the authorization of municipalities to include the power to acquire, own, lease or sell projects for the purpose of promoting a clean environment, as well as promoting {*32} industry and trade. A clean environment is to be fostered by "promoting responsible cooperation between municipalities and new or existing manufacturing, industrial and commercial enterprises in controlling air, water, and other environmental pollution." The manner in which cooperation is to be promoted is not specified.

It will be noted that the **Industrial Revenue Bond Act**, (§§ 14-31-1, et seq.; N.M.S.A., 1953 Comp. as amended) confers authority only upon municipal governing bodies to issue industrial revenue bonds. No other governmental body, either local or state, is given any authority by the Act. Therefore, any action taken under the authority of the Act must be taken by the municipal governing authority and no other.

Since the Act (and the proposed amendment) does not authorize action by any state (as opposed to local) agency, the amendment in question could not serve as authority for the state air pollution agency to do anything. The answer to your first question must, therefore, be in the negative.

This opinion should not be read as indicating that the state air pollution control agency could not prevent industrial expansion or the location of new industry within the state. This opinion merely indicates that the Industrial Revenue Bond Act does not provide the authority for such action.

2. The power to acquire, own or lease projects for the purpose of promoting a clean environment does not give municipalities the power to set pollution control standards or to enforce such standards. The Industrial Revenue Bond Act merely empowers municipalities to issue bonds and to use the revenue derived therefrom to fund projects whose purpose is to control pollution. But nowhere does that Act give municipalities the power to set or enforce pollution standards.

The Air Quality Control Act (§§ 12-14-1, et seq.; N.M.S.A., 1953 Comp. [1970 Interim Supp.]) provides the legislative authority for the promulgation and enforcement of pollution control standards. Since the Industrial Revenue Bond Act does not cover promulgation or enforcement of standards, the two acts are not in conflict, and thus one act does not control the other.

In fact, the Acts must be read as complementary. Once standards are set, a municipality may wish to attract new industry or accommodate existing industry by providing pollution control projects which take some of the burden off the industries. An example of this might be an industrial waste disposal project for a proposed industrial park.

Therefore, it is apparent that the Industrial Revenue Bond Act does not control over the Air Quality Control Act.

**SENATE BILL 4 30TH LEGISLATURE STATE OF NEW MEXICO 1ST SESSION,
1971 INTRODUCED BY FRED A. GROSS JR.**

AN ACT

RELATING TO ENVIRONMENTAL CONTROL; PROVIDING FOR INDUSTRIAL
REVENUE BONDS; AMENDING SECTIONS 14-31-1, 14-31-2 AND 14-31-3 NMSA

1953 (BEING LAWS 1965, CHAPTER 300, SECTIONS 14-31-1 THROUGH 14-31-3, AS AMENDED); AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 14-31-1 NMSA 1953 (being Laws 1965, Chapter 300, Section 14-31-1, as amended) is amended to read:

"14-31-1. INDUSTRIAL REVENUE BOND ACT -- DEFINITIONS. -- Wherever used in the Industrial Revenue Bond Act, unless a different meaning clearly appears in the context, the following terms, whether used in the singular or plural, shall be given the following respective interpretations:

A. "municipality" means any city, town or village in the state of New Mexico;

B. "project" means **the following or {*33} any combination of two or more of** any land, and building or other improvements thereon, the acquisition by or for a New Mexico corporation of the assets or stock of an existing business or corporation located outside the state of New Mexico to be relocated within or near the municipality in the state of New Mexico, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use by the following or by any combination of two or more thereof:

(1) any industry for the manufacturing, processing or assembling of any agricultural or manufactured products;

(2) any commercial enterprise in storing, warehousing, distributing or selling products of agriculture, mining or industry, but does not include facilities designed for the sale or distribution to the public of electricity, gas, water or telephone or other services commonly classified as public utilities; and

(3) any business in which all or part of the activities of such business involve the supplying of services to the general public or to governmental agencies or to a specific industry or customer;

C. "governing body" means the board or body in which the legislative powers of the municipality are vested;

D. "property" means **the following or any combination of two or more of:**

(1) [any] land;

(2) improvements [thereon] **on land;**

(3) buildings; [and any]

(4) improvements [thereto] **to buildings;**

(5) machinery and equipment of any and all kinds necessary to the project;

(6) operating capital; and

(7) any other **real and** personal properties deemed necessary in connection with the said project, **including, without limiting the foregoing, land, rights-of-way, easements, licenses, equipment and devices, individually or in combination, to control air pollution, water pollution or other pollution of the environment produced in whole or in part, in the determination of the governing body, by any such existing or newly located industry, commercial enterprise or business;** and

E. "mortgage" means a mortgage or a mortgage and deed of trust, or the pledge and hypothecation of any assets as collateral security."

Section 2. Section 14-31-2 NMSA 1953 (being Laws 1965, Chapter 300, Section 14-31-2) is amended to read:

"14-31-2. LEGISLATIVE INTENT. -- It is the intent of the legislature by the passage of [Sections 14-31-1 through 14-31-13 New Mexico Statutes Annotated, 1953 Compilation] **the Industrial Revenue Bond Act** to authorize municipalities to acquire, own, lease or sell projects for the purpose of promoting industry, [and] trade **and a clean environment** by inducing manufacturing, industrial and commercial enterprises to locate or expand in this state, promoting the use of the agricultural products and natural resources of this state, [and] promoting a sound and proper balance in this state between agriculture, commerce and industry, **and promoting responsible cooperation between municipalities and new or existing manufacturing, industrial and commercial enterprises in controlling air, water and other environmental pollution.** It is intended that each project be self-liquidating. It is not intended hereby to authorize any municipality itself to operate any manufacturing, industrial or commercial enterprise. [Sections 14-31-1 through 14-31-13 New Mexico Statutes Annotated, 1953 Compilation] **The Industrial Revenue Bond Act** shall be liberally construed in conformity with the said intent."

Section 3. Section 14-31-3 NMSA 1953 (being Laws 1965, Chapter 300, Section 14-31-3) is amended to read:

"14-31-3. ADDITIONAL POWERS CONFERRED ON MUNICIPALITIES. ^{*34} -- In addition to any other powers which it may [now] have, each municipality [shall have the following powers] **may:**

A. [to] acquire, whether by construction, purchase, gift or lease, one or more projects, which shall be located within this state and may be located within or without the municipality, or partially within or partially without the municipality, but which shall not be

located more than [fifteen] **thirty-five** miles outside of the corporate limits of the municipality;

B. [to] sell or lease or otherwise dispose of any or all of its projects upon such terms and conditions as the governing body may deem advisable and as shall not conflict with the provisions of [Sections 14-31-1 through 14-31-13 New Mexico Statutes Annotated, 1953 Compilation] **the Industrial Revenue Bond Act**; and

C. [to] issue revenue bonds for the purpose of defraying the cost of acquiring, by construction and purchase, or either, any project, and [to] secure the payment of such bonds, all as [hereinafter] provided **in the Industrial Revenue Bond Act**. No municipality shall have the power to operate any project as a business or in any manner except as lessor thereof."

Section 4. SEVERABILITY. -- If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 5. EMERGENCY. -- It is necessary for the public peace, health and safety that this act take effect immediately.

By: C. Emery Cuddy, Jr.

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