

Opinion No. 71-48

March 25, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Mr. Robert E. Kirkpatrick Director Department of Finance & Administration Suite 421 Legislative-Executive Bldg. Santa Fe, New Mexico 87501

QUESTIONS

FACTS

This office is advised that Eastern New Mexico University issued **revenue** bonds pursuant to the statutes authorizing the issuance of such bonds to fund income producing buildings and improvements. Sections 73-29-1 through 73-29-13, N.M.S.A., 1953 Comp. Now the University and the Board of Educational Finance have requested that the Legislature make a \$ 200,000 appropriation to meet a deficit in the interest and retirement fund for certain dormitory bonds.

QUESTIONS

1. Can the Legislature appropriate funds to meet the deficit in the revenue bond interest and retirement fund?
2. If the Legislature does appropriate the money, may the institution use the funds to pay principal and interest on the bonds?

CONCLUSIONS

1. No.
2. No.

OPINION

{*67} ANALYSIS

Revenue bonds are exactly what the name signifies; they are bonds which are to be retired solely from the proceeds of the operation of the public structure or enterprise created from the moneys derived from the bond sale. **Schureman v. State Highway Comm'n**, 377 Mich. 609, 141 N.W.2d 62. General Obligation bonds on the other hand are those for which the credit of the state is pledged for payment of the bonds.

Restrictions on state, county, municipal and school district indebtedness are contained in our Constitution. Article IX, Sections 8, 9, 10, 11 and 12. Such specific limited

indebtedness incurred by the issuance of general obligation bonds for a particular purpose is subject to approval by the electorate.

To use general fund moneys to "bail out" a revenue bond issue that did not produce revenues according to expectations, has the actual effect of changing a revenue bond issue into a general obligation bond issue. The very statutes used as authority for the bond issue in the first place prohibit the procedure. Section 73-29-12, N.M.S.A., 1953 Comp. specifically provides as follows:

"No obligation created hereunder shall ever be or become a charge or debt against the state of New Mexico, but all such obligations, {*68} including principal and interest, **shall be payable solely from the net income derived from the buildings, facilities and improvements** as in this act [73-29-1 through 73-29-13] specified; Provided, however, that any purchase-money mortgage, deed of trust or other security interest constituting a purchase-money mortgage may be foreclosed against said buildings, facilities or improvements so pledged, without the right to a deficiency judgement." (Emphasis added.)

Attorney General Opinion 57-68 dealt with the same issue here presented, i.e., paying off the revenue bonds with sources other than income from revenue-producing facilities. In the conclusion this office states, "The only income which can be pledged for the payment of bonds issued under Chapter 177, Laws 1939, is the income from buildings or other structures to be erected." The reasoning and conclusion were clearly correct.

The appropriation here in question, no matter how labelled, cannot but erode the very real distinction between revenue bonds for income-producing facilities and general obligations of the state. The impact would be significant on our entire bonding structure. If the income projections on revenue-producing facilities financed with revenue bond moneys were faulty, as they apparently were in this case, the issuer would simply ask for an appropriation from the general fund -- a procedure never contemplated nor authorized. Default on bond payments can be prevented by use of the procedures now contained in Section 73-29-14, N.M.S.A., 1953 Comp., as amended in 1969, which permits all the flexibility that should be needed and all that is permitted.

By: Oliver E. Payne

Deputy Attorney General