

Opinion No. 71-51

April 13, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Mr. Gordon Byrd Assistant Director Department of Development 113 Washington Avenue Santa Fe, N.M. 87501

QUESTIONS

FACTS

The Industrial Revenue Bond Act was enacted to promote industry and trade by inducing manufacturing, industrial and commercial enterprises to locate or expand in New Mexico. To accomplish this purpose, the Act empowers a municipality to:

- (1) Acquire by construction, purchase, gift or lease, one or more projects;
- (2) Sell or lease or otherwise dispose of any or all of its projects upon such terms and conditions as the governing body of the municipality shall deem advisable; and
- (3) Issue revenue bonds for the purpose of acquiring, by construction and purchase, or either, any project, and to secure the payment of such bonds. Section 14-31-3, N.M.S.A., 1953 Comp.

National Presto Industries, Inc. has announced its intension to build a manufacturing facility in Alamogordo, New Mexico, this year, 1971. This company intends to finance its own building construction and purchase of land, but would like to utilize the provisions of the New Mexico Industrial Revenue Bond Act for the purchases of machinery and equipment to be used in this facility.

QUESTION

Under the Industrial Revenue Bond Act can a municipality issue bonds for only machinery and equipment to be used in a manufacturing facility, the land and building of which will be financed through other means.

ANSWER

YES.

OPINION

{*71} **ANALYSIS**

The Industrial Revenue Bond Act, Sections 14-31-1 through 13, N.M.S.A., 1953 Comp., was enacted by Laws of 1965, Chapter 300 in order to:

"authorize municipalities to acquire, own, lease or sell projects for the purpose of promoting industry and trade by inducing manufacturing, industrial and commercial enterprises to locate or expand in this state . . . " Section 14-31-2, **supra**.

As stated above, in order to accomplish such purpose this statute granted municipalities the power to issue revenue bonds for acquisition of industrial property. **Village of Deming v. Hosdreg Company**, 62 N.M. 18, 303 P.2d 920 (1956).

Whether, under the language in Section 14-31-3, **supra**, authorizing a municipality to issue revenue bonds, a company intending to utilize the provisions of the Industrial Revenue Bond Act and the municipality with the power to issue bonds for the machinery and equipment to be used in the industry, may do so without financing the land and buildings as well, is the question at issue here. A definition of the word "project" , as used in Section 14-31-1(B), **supra**, is determinative.

That section interprets "projects" as:

"any land, and building or other improvements {*72} thereon, the acquisition by or for a New Mexico corporation of the assets or stock of any 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 . . ."

Opinion of the Attorney General No. 60-114, dated June 17, 1960, in analyzing this interpretation stated as follows:

"To us the plain meaning of the language of this section is clear that all three of the above elements [(1) land together with buildings; (2) assets or stock of an existing business located outside New Mexico to be operated by or on behalf of a New Mexico corporation, and (3) other real and personal properties] must be present before there is a "project" . . ."

This conclusion, unsupported by authority, is reasonable when compared with other interpretations. See **People ex rel. San Francisco Bay Conservation and Development Commission v. Town of Emeryville**, 72 Cal. Rptr. 790, 446 P.2d 790 (1968), "a detailed and specific plan prepared in furtherance of a determination to accomplish a certain objective"; and **Power Authority of State of New York v. Federal Power Commission**, 339 F.2d 269 (2nd Cir. 1964), "complete unit of improvement or development."

However, Opinion of the Attorney General No. 60-172, dated September 23, 1960, expressly overruled this portion of the earlier opinion. Basing its conclusion on the "expressed intent" of the Act, the opinion stated that the three clauses "are more

properly read in the disjunctive." Such interpretation led to the conclusion that "a new facility (consisting only of land, a building on the land, and equipment in the building but not including the acquisition of the assets or stock of a business or corporation located outside the State of New Mexico) constitute[s] a "project" within the meaning of Section 14-41-31, N.M.S.A., 1953 Comp. (P.S.)."

While the above question is somewhat different from that presented here, the decision to liberally construe the Act in order to achieve the intent stated, in conformity with the legislative mandate for liberal construction, Section 14-31-2, **supra**, is relevant to this issue. The objective sought to be achieved by the Industrial Revenue Bond Act is to "promote industry and trade by including manufacturing, industrial and commercial enterprises to locate or expand in this state." **Village of Deming v. Hosdreg Company, supra.**

Strict interpretation of the word "project", requiring an interested industry to utilize the Industrial Revenue Bond Act for machinery, equipment, building and land, may result in that industry determining not to locate within this state. Clearly the intent of the act would be thwarted by such interpretation. See **Village of Deming v. Hosdreg Company, supra.** Thus, it seems that a reasonable construction of the statute should be adopted, and that the reasonable construction is that so long as the purpose of the statute -- attracting payrolls to New Mexico -- is satisfied, the definitional problems are to be resolved in favor of whatever plan is devised. See "Municipal Inducements" -- The New Mexico Commercial and Industrial Project Revenue Bond Act, 48 Cal. L. Rev. 58 (1960).

Because liberal interpretation is necessary to achieve the goals sought by the Act, the word "project" should be construed in such manner. We conclude, therefore, that the word "project" as used in the Industrial Revenue Bond Act, allows a municipality to issue revenue bonds for financing machinery and equipment to be used in an industry, the land and building of which are financed through other means.

Further support for such a result is found in Section 14-31-5, **supra**, in which it is stated that:

"The principal of and interest on any bonds issued under the authority of sections 14-31-1 through 14-31-13, New Mexico Statutes Annotated, 1953 Compilation, shall be secured by a pledge of the revenues out of which such bonds shall be made payable, may be secured by a mortgage {*73} covering **all or any part** of the project from which the revenues so pledged may be derived, and may be secured by a pledge of the lease of such project." (Emphasis added.)

Thus, under the terms of the statute itself the security for such a bond may come from only part of the "project." The municipality will be a secured party if it arranges for the proper security interest for the part of the "project" financed through the Industrial Revenue Bond Act.

There seems to be no problem, therefore, in allowing a municipality to utilize the Industrial Revenue Bond Act and issue a bond to finance only the machinery and equipment for an industry wishing to locate within the state.

By: Leila Andrews

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