

Opinion No. 74-27

August 16, 1974

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: David W. King State Planning Officer State Planning Office Executive-Legislative Building Santa Fe, New Mexico 87501

QUESTIONS

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Can county highway bonds be issued to match federal funds for the construction or repair of roads which are not classified as county roads?

CONCLUSIONS

See analysis.

OPINION

{*53} ANALYSIS

Mr. Gary Carlson of the New Mexico Legislative Council Service, in an Information Memorandum to Senator Jack Morgan, has answered the question carefully and correctly. With minor changes acceptable to Mr. Carlson, his memorandum will be quoted in its entirety and adopted by this office.

"You have asked whether county highway bonds can be issued to match federal funds for the construction or repair of roads which are not classified as county roads.

"Section 55-5-1 NMSA 1953 authorizes boards of county commissioners to '. . . issue bonds for the construction and repair of roads and bridges within the limits of their respective counties . . .' This authority is limited by Article IX, Section 10 of the constitution of New Mexico which specifies that county bonds can only be issued '. . . after the proposition to create such debt has been submitted to the qualified electors of the county . . . and approved by a majority of those voting thereon . . .' and further limited by Article IX, Section 13 which limits the indebtedness of any county to 4% of the value of the taxable property within the county.

Once county highway bonds are issued, Section 55-5-7 NMSA 1953 requires the county treasurer to place the proceeds of the bonds into the county road fund. Section 55-3-9 NMSA 1953 limits disbursements from the fund for only those purposes approved by the board of county commissioners in their annual budget. Also Section 55-1-2 NMSA 1953, which makes the county responsible for repair and maintenance of all public

highways within the county except those within an incorporated municipality, has been interpreted by the attorney general to mean that money from county road funds cannot be used to repair roads within the limits of a municipality. AG Opinion # 4728 (1945-46); AG Opinion # 65-228 (1965).

"Subject to the foregoing provisions, county highway bonds can be used for the construction or repair of roads within the county which are other than county roads. Section 55-5-1 NMSA 1953 appears to apply to any public highway within the county which, under Section 55 - 1 - 1 NMSA 1953, would include a state or federal highway.

"The state highway department would clearly have exclusive control over any project on a state or federal highway (Section 55-2-18 NMSA 1953). This would include the bidding, construction and all other aspects of the project, including the management of funds used in the project. Section 55-2-20 NMSA 1953 allows the state highway department to enter into agreements with counties and the federal government for the division of expenses used in projects on public highways. Therefore, any proceeds from county highway bonds could be turned over to the state highway department for use on {*54} public highways within the county. However, these disbursements from the county road fund could not be used for roads within the limits of an incorporated municipality, so any money used for that purpose would have to be provided by the state or federal governments."

By: Bill Primm

Assistant Attorney General