

Opinion No. 75-22

March 19, 1975

BY: OPINION OF TONEY ANAYA, Attorney General

TO: Representative William B. O'Donnell New Mexico State Representative State Capitol Building Santa Fe, New Mexico 87503

QUESTIONS

FACTS

Committee substitute for House Bill 436, if enacted, would create development credit corporations (DCCs), repeal Sections 51-23-1 through 51-23-15, NMSA, 1953 Comp. and would appropriate state money for the purchase of DCC bonds and other investments by the state treasurer.

QUESTIONS

Is committee substitute for House Bill 436 inconsistent with the provisions of the New Mexico Constitution?

CONCLUSION

No, see analysis.

OPINION

{*77} ANALYSIS

The proposed bill would appear to raise questions under three New Mexico constitutional provisions: Article IX, Section 14; Article VIII, Section 4; and Article XII, Section 7.

Article IX, Section 14, **supra**, provides that the state may not, directly or indirectly, lend or pledge its credit, or make any donation to or in aid of any person or corporation, etc. Committee substitute for House Bill 436 provides that the state may purchase DCC bonds. The public money used to purchase the bonds will be repaid with interest to the state within a five year period from the date of purchase of the bonds. In our judgment, this does not constitute a donation or the lending or pledging of credit by the state. See Opinion of the Attorney General No. 70-23, dated February 17, 1970; **Village of Deming v. Hosdreg Co.**, 62 N.M. 18, 303 P.2d 920 (1956); **City of Clovis v. Southwestern Public Service Co.**, 49 N.M. 270, 161 P.2d 878 (1945). There is some language in the bill which refers to **loans** by the state. The use of the term "loans" is misleading and should be clarified by the legislature.

Article VIII, Section 4, **supra**, requires that public moneys be invested in certain specified investments, unless such moneys are otherwise invested in **interest-bearing securities**. In committee substitute for House Bill 436, public money is to be invested in bonds of a DCC. The bonds are interest-bearing securities. The state's security for the bonds is a lien on the assets of the corporation and the assets of the DCC will always exceed the state's investment. Also, under the proposal, public money appropriated for purchase of DCC bonds in excess of the amount necessary for purchase of bonds from the DCC may be invested by the state in various secured obligations, bonds, and certificates of deposit. These are also interest-bearing securities. Specific statutory authority for the purchase of interest-bearing securities is necessary to eliminate any problem with respect to Article VIII, Section 4, **supra**. See Opinion of the Attorney General {*78} No. 70-98, dated December 15, 1970; Opinion of the Attorney General No. 68-6, dated January 10, 1968. Thus, the investments authorized by committee substitute for House Bill 436 are not inconsistent with Article VIII, Section 4, **supra**.

Article XII, Section 7, **supra**, authorizes only the state investment officer to invest permanent funds.

Is the "perpetual" fund created by the proposed bill a "permanent fund" within the meaning of Article XII, Section 7, **supra**? Although the answer seems to be clearly in the negative, nevertheless there is a potential conflict which should be mentioned. Permanent funds of the State of New Mexico are specifically delineated in Section 7-1-16, NMSA, 1953 Comp. Sources of permanent funds are ordinarily derived from sale of lands. Section 7-1-17, NMSA, 1953 Comp. The "perpetual" fund created by committee substitute for House Bill 436 is apparently derived from general tax revenues. Also, this perpetual fund is not listed in Section 7-1-16, **supra**. It is perhaps "perpetual" in the sense that the funds do not revert. However, the term "perpetual" is ambiguous. Perpetual means permanent and a perpetual fund could arguably be construed to be a permanent fund. We suggest the legislature strike the term "perpetual" or clarify its meaning. A provision could be added to indicate that the funds shall not revert to the general fund at the end of the fiscal year.

By: Ralph W. Muxlow, II

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