

Opinion No. 81-19

August 4, 1981

OPINION OF: Jeff Bingaman, Attorney General

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TO: Ms. Kathleen Marr, Secretary, Department of Finance and Administration, 421 State Capitol, Santa Fe, New Mexico 87502

BONDS; COUNTIES

Synopsis: The proceeds of bonds authorized by the County Industrial Revenue Bond Act must be used to acquire projects for sale or lease and cannot be used to provide funds for low interest loans.

QUESTIONS

Pursuant to its authority under the County Industrial Revenue Bond Act, Sections 4-59-1 to 4-59-16 NMSA 1978, may a county issue agricultural development revenue bonds to make funds available for low interest loans to farmers and ranchers?

CONCLUSIONS

No.

ANALYSIS

A county is a political subdivision of the state possessing only such powers as are expressly granted to it by the legislature or which may necessarily be implied therefrom. **El Dorado at Santa Fe, Inc. v. Board of County Commissioners of Santa Fe County**, 89 N.M. 313, 551 P.2d 1360 (1976). By passing the County Industrial Revenue Bond Act [Act], the legislature expressly intended to authorize counties to acquire, own, lease or sell "projects" for the purpose of promoting certain enterprises including "the use of the agricultural products and natural resources of this state." Section 4-59-3.

OPINION

Although the promotion of agriculture and ranching may well be within the intended purpose of the Act, it is not intended that a county be authorized to issue agricultural development revenue bonds to provide funds to make loans to farmers and ranchers, regardless of how such a bond program may be structured. The Act authorizes a county to do only three things:

1. acquire "projects" by construction, purchase, gift or lease;
2. sell, lease or otherwise dispose of "projects" consistent with the provisions of the Act; and
3. issue revenue bonds for the purposes of defraying the cost of acquiring a "project."

Section 4-59-4. A "project is defined at Section 4-59-2(E) to mean, applicable to agricultural purposes,

"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 to be relocated within a county but not within the boundaries of any incorporated municipality, in the State, {**250*} 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, . . ."

In essence, the Act is intended to promote industry and trade by authorizing counties to issue revenue bonds for the purpose of acquiring certain commercial properties which can be sold or leased by the county to businesses wishing to locate in the county.

Where the authority is given to accomplish a particular purpose and the mode of doing it is prescribed, it must be done in that mode to the exclusion of all others. **Fancher v. Board of County Commissioners of Grant County**, 28 N.M. 179, 210 P. 237 (1922). Thus, although an intended purpose of the Act may be accomplished by means of an agricultural development revenue bond program providing funds for low interest loans to farmers and ranchers, such a loan program is not one of the means prescribed by the legislature to accomplish that purpose.

The Act is virtually identical to the municipal Industrial Revenue Bond Act, Sections 3-32-1 to 3-32-16 NMSA 1978, see **Village of Deming v. Hosdreg Co.**, 62 N.M. 18, 303 P.2d 920 (1956) [bond revenues to be used to acquire a manufacturing project], and the legislature has provided that both the county act and the municipal act are to be liberally construed. Section 4-59-16 and Section 3-32-4. Accordingly, under the municipal act, it has been held that proceeds from industrial revenue bonds may be used to acquire property useful to a company for the purpose of abating and controlling environmental pollution although such pollution control facilities would not provide substantial employment and although the user company was already located adjacent to the town. **Kennecott Copper Corporation v. Town of Hurley**, 84 N.M. 743, 507 P.2d 1074 (1973).

This office has applied the rule of liberal construction to conclude that (1) bond proceeds may be used to acquire a facility consisting of land, building and equipment but not the assets and stock of a business, Opinion of the Attorney General No. 60-172, dated September 23, 1960; (2) bond proceeds may be used to acquire land, buildings and improvements for sale or lease to a commercial airline already located in New Mexico, Opinion of the Attorney General No. 67-120, dated October 20, 1967; and (3) bond proceeds may be used to acquire machinery and equipment although the land and building would be financed by other means, Opinion of the Attorney General No. 71-51, dated April 13, 1971.:

The rule of liberal construction would not, however, extend to construe the Act as authorizing a county to issue bonds to make money available for loans to ranchers and farmers. Quite simply, under such a loan program, the county is not acquiring a "project" as that term is defined in the Act or as it could conceivably be construed. "Projects" {251} which may be acquired with proceeds from industrial revenue bonds must include some form of physical facility, either land, buildings and improvements or assets, stock and property of an existing business which can be located in the county. See, "Municipal Inducements" - The New Mexico Commercial and Industrial Project Revenue Bond Act, 48 Cal. L. Rev. 58 (1960). This office has previously concluded that proceeds from industrial revenue bonds may not be used to finance operating capital when no "project" is involved. Opinion 67-120, **supra**.

This restriction on the use of bond proceeds is clear not only from the limited authority granted counties in Section 4-59-4(A) to acquire "projects" and from the definition of "project" at Section 4-59-2(E), but is apparent from other significant provisions of the Act.

For example, Section 4-59-5 provides that "bonds shall be payable [by the county] solely out of revenues derived from the projects for which the bonds are issued." A county may derive such revenues pursuant to its authority to "sell, or lease or otherwise dispose" of "projects." Section 4-59-4(B). Further, Section 4-59-7(B) refers to "payment to the county of such rentals or payments" sufficient to pay principal and interest on the bonds and Section 4-59-12 provides that "revenue derived from any lease or sale by the county" shall be exempt from taxation. In short, no provision of the Act would indicate that a county may generate revenues to pay bonds from any source other than the sale or lease of "projects."

Under a loan program, bonds would be paid instead from revenues generated by principal and interest payments made by the individual borrowers. Using bond proceeds to finance loans is inconsistent with those provisions of the Act which require bond proceeds to finance "projects" which can generate sale or lease revenues to pay the bonds.

Similarly, where Section 4-59-6 provides that the principal and interest on bonds issued pursuant to the Act may be secured by a mortgage of a project or a pledge of the lease of a project, it must be assumed that the legislature intended that "projects" financed

under the Act would be subject to mortgage or lease. If bond proceeds were used to finance loans, no mortgage or lease, as defined by the Act, could be executed to secure the bonds.

It has been suggested, however, that other provisions of the Act would accommodate a loan program. For example, Section 4-59-3 provides that it is intended that projects be self-liquidating; Section 4-59-4 provides that a county shall not have the power to operate a project as a business; Section 4-59-5 provides that bonds issued under the Act shall never constitute an indebtedness of the county which may be charged against its general credit or taxing powers; and Section 4-59-6 provides that the principal and interest of bonds issued under the Act "shall be secured by a pledge of the revenues out of which the bonds shall be payable." It may be that a loan program could be structured to comply with these particular provisions of the Act but the mere fact of such compliance does not establish in a county the authority to issue bonds for the purpose of financing loans.

It is well-stated that an entire act is to be read together so that each provision may be considered in relation to every other part and the legislative intent and purpose is gleaned from consideration {**252*} of the whole act. **Winston v. New Mexico State Police Board**, 80 N.M. 310, 454 P.2d 967 (1969). Taken as a whole, the Act evidences legislative intent to promote industry and trade by authorizing counties to issue revenue bonds, the proceeds of which would be used to acquire certain "projects." Revenues derived from the sale or lease of such "projects" would be used to pay the bonds. All of the provisions of the Act must be applied in the context of the specific authority which has been granted to the counties.

ATTORNEY GENERAL

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[n*](#) In Opinion of the Attorney General No. 70-102, dated December 24, 1970, this office concluded that industrial revenue bonds may not be used to acquire a cemetery.