

Opinion No. 88-46

September 1, 1988

OPINION OF: HAL STRATTON, Attorney General

BY: Lyn Hebert, Assistant Attorney General

TO: Hon. Carlos R. Cisneros, New Mexico State Senator, P.O. Box 1129, Questa, NM 87556

QUESTIONS

May an appropriation by the legislature for improving and enlarging the facilities of the Questa Airport be used for a new airport at a site different from the existing airport?

CONCLUSIONS

No.

ANALYSIS

In 1987 the legislature authorized the state board of finance to issue severance tax bonds:

A. The state board of finance may issue and sell severance tax bonds in compliance with the Severance Tax Bonding Act in an amount not to exceed the total of the amounts authorized for the purposes specified in this section or in any lesser amount as may be legally issued under limitations provided by either state or federal law, or both. The state board of finance shall schedule the issuance and sale of the bonds in the most expeditious and economical a [sic] manner possible upon a finding by the board that the project has been developed sufficiently to justify the issuance and that the project can proceed to contract within a reasonable time. The state board of finance shall further take such appropriate steps as are necessary to comply with the Internal Revenue Code of 1986, as amended. Proceeds from the sale of bonds are appropriated for the purposes specified in this section.

B. The agencies named in the following subsections shall notify the state board of finance when the money from the proceeds of the severance tax bonds authorized in Subsection A of this section is needed for the purposes specified in the following subsections. Appropriations of the proceeds for each purpose is subject to the limitations, when applicable, provided in this act.

....

I. Upon certification of the local government division of the department of finance and administration, the following amounts are appropriated to the local government division for the following purposes:

....

(6) seventy-five thousand (\$75,000) for improving and enlarging the facilities of the Questa airport....

1987 N.M. Laws, ch. 354, § 1 (Emphasis added).

Article IX, Section 9 of the New Mexico Constitution restricts the use of bond proceeds: "Any money borrowed by the state, or any county, district or municipality thereof, shall be applied to the purpose for which it was obtained, or to repay such loan, and to no other purpose whatever." Article IV, Section 30 of the Constitution provides:

Except interest or other payments on the public debt, money shall be paid out of the treasury only upon appropriations made by the legislature. No money shall be paid therefrom except upon warrant drawn by the proper officer. Every law making an appropriation shall distinctly specify the sum appropriated and the object to which it is to be applied.

This provision insures legislative control over public funds and prevents executive encroachment. *Gamble v. Velarde*, 36 N.M. 262, 266, 13 P.2d 559, 562 (1932). It requires the legislature to specify distinctly the sum appropriated and the object to which it will be applied. The Supreme Court in *Gamble* stated, "While defendant puts greatest stress upon specification of 'sum,' we think that specification of object is of equal, if not greater, importance." *Id.* at 267, 13 P.2d at 562. "Either a constitutional appropriation has been made by the legislature through the designation of the amount and object of an expenditure under definite fixed conditions and circumstances by the proper official ... or the appropriation fails." *State ex rel. Constitutional Convention v. Evans*, 80 N.M. 720, 724, 460 P.2d 250, 254 (1969).

The legislature appropriated \$75,000 for "improving and enlarging the facilities of the Questa airport." (Emphasis added). Absent expression of any clear intent to the contrary, words in a statute have their ordinary and usual meaning. *Tafoya v. State Police Bd.*, 81 N.M. 710, 714, 472 P.2d 973, 977 (1970). "Improve" means "to meliorate, make better, increase the value or good qualities of, mend, repair, as to improve a street by grading, parking, curbing, paving, etc." *Black's Law Dictionary* 386 (5th ed. 1983). *Accord, Builders Land Co. v. Martens*, 255 Iowa 231, 233, 122 N.W.2d 189, 190 (1963). "Enlarge" means "to make larger; extend." *Webster's New Collegiate Dictionary* 375 (1981). "Enlarged" connotes the existence of something lesser in extent. No article can be enlarged unless there is an original article to which reference is made. *Gorrell v. City of Casper*, 371 P.2d 835, 840 (Wyo. 1962). Thus, both "improve" and "enlarge" presuppose the existence of something that can be improved or enlarged.

In 1987 the Village of Questa already owned an airport. The language in 1987 N.M. Laws, ch. 354, § 1(l)(6) manifests the legislature's intent to apply funds to the existing airport. The legislature could have appropriated \$75,000 for an airport in Questa without restrictions, designating the object of the appropriation as "an airport" in Questa rather than "the airport." The legislature's choice of words ---- "improving and enlarging the facilities of the Questa airport" ---- is clear and unambiguous. Consequently, we need not invoke any rules of statutory construction. *State ex rel. Maloney v. Sierra*, 82 N.M. 125, 134, 477 P.2d 301, 310 (1970). It is therefore our opinion that the use of the 1987 severance tax bond proceeds to construct a new Questa airport at a different site would violate Article IV, Section 30 and Article IX, Section 9 of the New Mexico Constitution.

ATTORNEY GENERAL

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