

Opinion No. 12-924

July 22, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Hon. John I. Hinkle, City Treasurer, Hagerman, N. M.

WATER WORKS BONDS.

A town cannot make a valid issue of bonds for water works until after the electors have voted in favor thereof.

OPINION

{*65} I have received your letter of the 20th instant in which you ask my opinion as to the constitutionality of Section 7 of the senate substitute for senate bill No. 95 which attempts to validate \$ 25,000 of bonds for water works unanimously voted by the town of Hagerman prior to the passage of the Enabling Act and the adoption of the Constitution, although the town had less than 1,000 population.

The general rule, to be deduced from decisions of the courts on such questions, is that a state legislature may lawfully ratify any act like the issuance of bonds, which it might have lawfully authorized at the time that the act was performed. For the consideration of this question it may properly be assumed that the state legislature is the successor of the legislative assembly of the territory. Prior to the passage of the Enabling Act and the adoption of the Constitution the territorial legislative assembly could not have authorized the town of Hagerman with a population of less than 1,000, to issue bonds for water works in excess of four per cent of the assessed valuation of property in the town, such bonds in excess of that limitation not being permitted by the act of Congress on the subject in towns with less than 1,000 population. Therefore, the action of the town in voting those bonds cannot now be ratified by the Legislature because the Legislature could not have authorized such bonds at the time that they were voted.

It is true that under Section 13 of Article IX of the Constitution towns are permitted to contract debts in excess of the limitation of four per centum on the value of the taxable property, for the construction or purchase of a water or sewer system without any requirements as to publication, and if that constitutional provision had been in force when the bonds were voted the Legislature might now ratify the issuance of the bonds. The next preceding section of the Constitution which requires the question of incurring a debt to be submitted to a vote of the qualified electors at a regular election, appears to be applicable to the issuance of water or sewer bonds, and I am unable to see any way which your town can make a perfectly valid issue of such bonds until after the qualified electors have voted in favor thereof at a regular election.