

Opinion No. 20-2456

January 5, 1920

BY: N. D. MEYER, Assistant Attorney General

TO: Mr. Oscar Dobbs, City Engineer, Clovis, New Mexico.

Limitations Upon Municipalities to Issue Bonds for Waterworks.

OPINION

Answering your letter relative to the power of a municipality to levy and collect taxes for the purpose of maintaining a water system in excess of four per cent of the assessed valuation of such municipality, I beg to advise you as follows:

Section 3716 of the Code of 1915 authorizes incorporated cities, towns and villages to issue bonds for the purpose of securing funds for the construction or purchase of a system for supplying water, subject, however, to the limitations contained in Article IX of the Constitution.

Article IX seems to place two limitations upon municipalities in regard to the indebtedness which they can incur. Section 13 of said article declares that no municipality shall ever become indebted to an amount exceeding four per centum on the value of the taxable property within the municipality as shown by the last preceding assessment for purposes of taxation, with a proviso that any city, town or village may contract debts in excess of such limitation for the construction or purchase of a system for supplying water or of a sewer system for such city, town or village.

Section 12 of the same article provides that no city, town or village shall contract any debt except by ordinance which shall specify the purposes to which the funds to be raised shall be applied, and which shall provide for a tax levy not to exceed 12 mills on the dollar upon all taxable property within such city, town or village sufficient to pay the interest on and to extinguish the principal of such debt within fifty years.

The above would indicate that water and sewer indebtedness may be incurred without any limit, except that set forth in section 12 of Article IX.

This apparent limitation contained in section 12 does not apply to water and sewer systems.

The Supreme Court, in the case of Lanigan vs. Gallup, 17 N.M. 627, held that the 12-mill levy limitation fixed by section 12 of Article IX did not apply to debts contracted for the purchase or construction of a system for supplying water for cities, towns and villages.

As to whether or not a debt may be contracted and a tax levy made in excess of the four per cent limitation contained in section 13 of Article IX for the maintenance of a water system already completed, I would state that on the face it would seem that the limitation applies except where a water system is to be constructed or purchased. However, I am inclined to believe that this would be a construction so close that the Supreme Court would not tolerate it. In fact, the language that the Court has used in the Lanigan vs. Gallup case would lead one to believe that it was the intention of the legislature to make the exception broad enough so as to cover the maintenance and operation of water systems as well as the construction or purchase thereof.

At page 637 of the 17 New Mexico Reports, the Supreme Court reasons as follows:

"New Mexico is an arid state, and the greatest problem which confronts cities, towns and villages is the procuring of an ample supply of pure water. In many instances it is necessary to conduct the water supply through pipes, from the mountain streams, for many miles, and the cost is necessarily enormous. The states, in the arid region, almost without exception, have no constitutional limitation upon the amount of indebtedness which may be incurred for this purpose, and the framers of the constitution of New Mexico, familiar as they were with the conditions in the state, and the necessity which existed for an unlimited right to issue bonds and incur indebtedness for the purpose of providing a water supply, attempted, by the proviso to Sec. 13, to exempt the amount of such indebtedness from the restrictions and limitations which they had imposed upon indebtedness for other purposes."

It would therefore seem that the action of the City of Artesia in levying a water frontage tax by ordinance comes within the provisions of and is specifically authorized by section 3716 of the Code of 1915, and section 12 of Article IX of the State Constitution.

As to the indebtedness of the City of Clovis it is my opinion that bonds may be issued to the amount of \$ 108,000, exclusive of those which are now outstanding, for a water supply and sewer system, and of course, it would follow that the city can proceed to borrow money to cover any outstanding accounts since it appears there is no bonded indebtedness except the \$ 200,000 of water works and sewer bonds and which are not to be figured in the borrowing capacity of the city of four per cent of its assessed valuation of property for other purposes.

Trusting that the foregoing may be of some assistance to you in clarifying the complicated situation of your city in regard to its indebtedness, I beg to remain,

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