

## Opinion No. 21-3208

December 8, 1921

**BY:** HARRY S. BOWMAN, Attorney General

**TO:** Hon. Howard L. Bickley, City Attorney, Raton, New Mexico.

**Application Bateman Act to Contractual Indebtedness for Longer Period Than One Year.**

### OPINION

{\*103} Illness for several days, together with engagements in court by the members of the force of the office, have combined to prevent a more prompt reply to your letter requesting an opinion regarding the right of the City of Raton to become indebted for the {\*104} construction of a sewerage system, the indebtedness to be spread over a period of several years.

Your inquiry involves the application of the Bateman Act, (Sections 1227 to 1233, Code 1915), since it is the purpose to create an indebtedness which will not all be paid in the year in which the contract for such indebtedness is executed, but will be distributed over a period of future years.

I have given the matter mentioned very careful consideration, especially in view of the consequences that might arise from an erroneous interpretation of the Bateman Law as applied to a condition or conditions such as those outlined in your letter.

You cite two constitutional provisions from foreign states wherein are contained provisions similar to those which are contained in the Bateman Act. With this vital difference, however, that in the constitutional provisions of the two states, namely California and Idaho, there is an opportunity for the provisions of the Act to be obviated by a vote of the people of the two states.

The Bateman Act contains no such exception but provides that indebtedness created in violation of its terms shall be void.

For the foregoing reasons I am rather of the opinion that the cases interpreting the two constitutional provisions mentioned would not apply to indebtedness created in New Mexico in violation of the Bateman Act.

However, I am satisfied that the rule as laid down by Judge Dillon in his work on municipal corporations, at Page 361, Fifth Edition, Section 196, correctly states the law. An indebtedness created by a municipality which is to be paid within a certain period, not limited to the year in which the contract is made, is not in violation of statutory

provisions limiting the payment of debts created to the revenues produced in the year within which such debt is contracted for.

I am of the opinion that this rule applies particularly to indebtedness created for the purpose of water and sewerage facilities to municipalities and this opinion is based particularly upon the provisions of our Constitution which seem to place indebtedness created for such purposes in a class different from the ordinary debts of a municipality.

For the foregoing reasons I concur with you in your opinion that the City of Raton may become indebted for the purpose of paying in part for the installation of sewer facilities within the municipality and may provide for the payment of such indebtedness over a period of future years.