

Opinion No. 22-3418

May 8, 1922

BY: HARRY S. BOWMAN, Attorney General

TO: Mr. Frank R. Coon, Lordsburg, New Mexico.

Sewer System Not a Public Utility.

OPINION

{*149} In reply to your letter of the 4th instant asking if a sewer system is included under the definition of a public utility for which taxes may not be imposed to pay the principal of and interest upon bonds sold for the purpose of constructing such a sewer system, I wish to say:

Chapter 47, Laws 1919, requires that municipally owned and operated public utilities must collect a sufficient amount for the service rendered to maintain the said utility in good repair, provide for the improvement and extension thereof and the payment of legitimate expenses of operation, provide for the payment of the interest on bonds issued for the purpose of construction of such utility and providing for the creation of a sinking fund required by the terms of said bonds or the law governing their issue.

This act contemplates in the term "public utility," such utilities as bring in a revenue for the service rendered and furnished thereby.

So far as I know, the maintenance and operation of a sewer system does not result in the acquiring of revenue by reason of such maintenance and operation.

There are many reasons why a sewer system should not be considered as such a public utility as that defined in Chapter 47, and there are quite a number of authorities which hold that a public utility does not include a sewer system.

It, therefore, is my opinion that there would be no prohibition against the levy of a tax for the payment of interest or sinking fund for bonds issued for the construction of such a sewer system.