

## Opinion No. 22-3500

June 30, 1922

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

**TO:** State Tax Commission, Santa Fe, New Mexico.

**Approval Tax Commission for Issuance Bonds for Construction Municipal Water Plant, Not Necessary.**

### OPINION

{\*164} I have before me letter from the Village of Tularosa to your Commission, under date of June 24th, asking for permission to issue bonds in the sum of \$ 75,000.00, bearing interest at the rate of six per cent, payable in 1953, redeemable after twenty years, for the purpose of the construction of a waterworks system for the said village, and levying interest for the same.

I do not understand that there is any requirement of law that the issuance of bonds of this class must be approved by your Commission.

The letter states that the application is made under the requirements of Section 310 and 311, Chapter 133, Laws 1921. These are the sections which limit the tax levy of municipalities to 5 per cent increase over the amount produced on the face of the tax roll during the preceding year, but authorizing your Commission to permit a levy that will produce in excess of that amount upon proper request being made.

Aside from the question of the approval of the bond issue, there is another question to be considered, and that involves the provisions of Chapter 47, Laws 1919, which, in effect prohibit the levy of a tax for the purpose of creating a sinking fund to pay the bonds, or for the purpose of paying the interest on such bonds, issued to raise funds to purchase or construct any public utility. This act provides that the charges for services rendered by the public utility owned and operated by a municipality must be sufficient to raise the funds to pay for the construction of the utility and for the interest upon any moneys borrowed for that purpose.

I am doubtful as to the constitutionality of this section, as, in my opinion, it is in violation of Section 12, Article IX of the Constitution, which requires that municipalities shall create indebtedness only by ordinance, and which ordinance shall provide, among other things, for the levy of a tax not exceeding 12 mills on the dollar, to pay the interest on and to extinguish the principal of such debt within fifty years.

I would suggest that appropriate legal steps be taken to test the validity of the above mentioned legislation, in view of the provisions of the section of the fundamental law

above mentioned, and it would appear as if the present situation at Tularosa would be a most opportune time to present the question to the courts for consideration.

Aside from the question last suggested, however, I am of the opinion that the matter of a levy which would produce funds in excess of five per cent over what was produced last year may be acted upon by your commission according to your best judgment.

{\*165} I am returning herewith the letter from the Village of Tularosa, above mentioned.