

Opinion No. 24-3782

September 3, 1924

BY: JOHN W. ARMSTRONG, Assistant Attorney General

TO: Requested by: State Tax Commission, Santa Fe, New Mexico.

Construing Section 17, Chapter 48 Laws of 1921

Tax Levy to Meet Payments on Certificates of Indebtedness not Confined Within Five Mill Limit.

OPINION

{*166} Relating to your inquiry as to the power of Harding county to exceed the five mill tax levy in order to meet payments on Certificates of Indebtedness issued and sold by it under the provisions of Sec. 17, Chap. 48, S. L. 1921, our conclusions are:

In the first place, the certain expenses of Harding county contracted and payable for the years 1921 and 1922, and no other, are to be paid by the certificates in question. They are issued for the purpose of establishing the county and in so far as their being a part of "the public debt" is concerned, we see no essential difference between them and the bonds provided for in Section 18 of said Act. Our Supreme Court in the Martinez case has said: "The power granted by the Constitution to create new counties is of such a nature that, if other constitutional provisions conflict with it, they must ordinarily yield to the former power." Taxes may be levied and collected to meet this exigency even in excess of the five mills, We quote from the Martinez case as follows:

When the Legislature inserted this section of the Harding county act, it must have intended to grant some other and further power to the new county than that possessed by the old and fully organized counties of the state, under the general law above mentioned. That power must be the power to issue bonds for courthouse and jail purposes without the submission of the question to the vote of the people. The provision in the section that the bonds be issued in accordance with the Constitution and laws of the state, must refer to Section 29 of Article 4, above referred to, requiring provisions to be made for the levy of taxes, to pay interest, and provide a sinking fund, and to the provisions of the statute above referred to, {*167} prescribing the form and denomination of the bonds, rate of interest, place of payment, manner of execution, and other details not necessary to mention. If this is not the interpretation to be given the section, then the Legislature is to be convicted of a vain and foolish thing, because the section must be so interpreted to give it any effect whatever, the county already having power, as soon as organized, to issue bonds for courthouse and jail purposes under the general laws heretofore mentioned.

Counsel for appellant argues that the section is void by reason of being local and special legislation, regulating county affairs, which is prohibited by Section 24 of Article 4 of the Constitution. It is to be admitted that the section is local and special and regulates county affairs. All acts creating counties are local and special, and the limitation of the amount Harding county may spend for the purposes mentioned is a regulation of its affairs, in that it applies a different rule to it than is applied to the other organized counties under the general law. But this is of no consequence. The power granted by the Constitution to create new counties is of such a nature that, if other constitutional provisions conflict with it, they must ordinarily yield to the former power. In *State v. Saint et al.*, 28 N.M. 165, 210 Pac. 573, just now decided, we said:

"It is conceded by counsel for appellants, very properly we think, that the creation of a county in-cludes more than merely defining its boundaries; that it includes the appointment of its officers, or a provision for their appointment, the location of the county seat, provisions for the adjustment of its debts with the counties from which its territory has been taken, provisions for raising the funds for current expenses, and perhaps other provisions to enable the county to take its proper place among other counties in the state, and to perform its proper governmental and administrative duties; and in fact that it includes provisions for everything necessary and proper to enable the county to function as a complete municipal subdivision of the state."

We regard this statement, both upon principle and authority, as comprehensive and sound. When the Legislature creates a new county, it is presumed to know the conditions which exist therein and the requirements in the way of public buildings in order to enable the county to properly function. -- *Martinez v. Gallegos, et al*, 28 N.M. 170.