

Opinion No. 26-3896

June 23, 1926

BY: ROBERT C. DOW, Assistant Attorney General

TO: Hon. J. E. Owens, Chief Tax Commissioner, Santa Fe, New Mexico.

This Office is in receipt of your letter of June 22 wherein you state that the question has arisen in connection with the sale of bonds as to whether or not these bonds could be issued serial in form, due fifteen years from date of issue, one-fifteenth to be retired each year and a levy to retire the first installment to be made against the 1926 tax roll; the bonds you refer to being Courthouse and Jail bonds of DeBaca County.

I am of the opinion that under our State Constitution and Laws regulating county bond issues, the procedure as outlined in your letter cannot be used; § 29, Article 4 of our Constitution is as follows:

"No law authorizing indebtedness shall be enacted which does not provide for levying a tax sufficient to pay the interest, and for the payment at maturity of the principal."

§ 17, Chapter 11, Laws of 1917 is as follows:

"The County of De Baca may issue bonds for courthouse purposes to an amount not exceeding thirty thousand dollars, and for jail purposes to an amount not to exceed seven thousand and five hundred dollars; which bonds shall be issued in manner as provided by the Constitution of New Mexico, payable absolutely thirty years from their date and at the option of said county twenty years from this date."

A bond issue for court house and jail purposes for De Baca County should be made payable absolutely thirty years from date and at the option of the county twenty years from date, and the bond issue must be made in view of § 1167, New Mexico Statutes, Annotated, Codification of 1915, said section providing in substance that the County Commissioners shall make a levy upon the taxable property of the County to pay interest and create a sinking fund for final redemption, however, under this law the County Commissioners can not make a levy for the payment of the principal of the bonds until ten years after they are issued; it might be argued that under § 17 above quoted the County Commissioners can promulgate their own procedure but I think the safest plan is to follow the wording of the Statute, both with reference to the date of payment and with reference to the levy provided for in § 1167, 1915 Code.