

Opinion No. [29-53]

September 13, 1929

BY: J. A. MILLER, Assistant Attorney General

TO: Messrs. Walter, Woody & Heimerdinger, 403 Dixie Terminal, Cincinnati, Ohio.

MUNICIPAL CORPORATIONS -- Not limited in levy of taxes to supply water. Sections 12 and 13, Art. IX. Const.

OPINION

I have before me yours of the 9th inst. in re the situation at Columbus, New Mexico and in which you request an opinion from this office as to whether or not bonds and coupons of New Mexico municipalities are payable, principle and interest, from an unlimited tax levy.

The answer to your inquiry would seem to be contained in Sections 12 and 13 of Article IX of the Constitution of the State of New Mexico as interpreted by the Supreme Court of this State.

The constitutional provisions referred to are as follows:

"Sec. 12. No city, town or village shall contract any debt except by an ordinance, which shall be irrevocable until the indebtedness therein provided for shall have been fully paid or discharged and which shall specify the purpose to which the funds to be raised shall be applied, and which shall provide for the levy of a tax, not exceeding twelve mills on the dollar upon all taxable property within such city, town or village, sufficient to pay interest on, and to extinguish the principal of such debt within fifty years. The proceeds of such tax shall be applied only to the payment of such interest and principal. No such debt shall be created unless the question of incurring the same shall, at a regular election for councilmen, aldermen or other officers of such city, town or village, have been submitted to a vote of such qualified electors thereof as have paid a property tax therein during the preceding year, and a majority of those voting on the question, by ballot deposited in a separate ballot box, shall have voted in favor of creating such debt."

"Sec. 13. No county, city, town or village shall ever become indebted to an amount in the aggregate including existing indebtedness, exceeding four per centum on the value of the taxable property within such county, city, town or village, as shown by the last preceding assessment for state or county taxes; and all bonds or obligations issued in excess of such amount shall be void; provided, that any city, town or village may contract debts in excess of such limitations for the construction or purchase of a system for supplying water, or for a sewer system, for such city, town or village."

A construction of these sections was before the Supreme Court in the case, Lanigan vs. Gallup, 17 N.M., 627; 131 Pac., 997. You probably will find it interesting to read the entire opinion, which is too long to be here quoted in full. The question of present interest was not among those given primary attention by the court in the case mentioned, but in the course of the discussion of construction to be placed upon the sections above quoted, the court said:

"Two other questions, however, are involved in this case, which should be determined because of their importance, and for the future guidance of municipal authorities. The first is as to the effect of that clause in sec. 12 of art. 9, which provides that the ordinance 'shall provide for the levy of a tax, not exceeding twelve mills on the dollar, upon all taxable property within such city, town or village, sufficient to pay the interest on, and to extinguish the principal of, such debt within fifty years' upon the right of cities, towns and villages to contract debts for supplying water and for sewer systems. If such limitation applies to such debts, it will prohibit such municipalities from exercising the right to issue bonds, without limitations, for such purposes. In other words, it provides a limitation almost, if not quite as effective as that contained in that portion of sec. 13 of said article which precedes the proviso."

". . . Both sections being directed to the same subject matter are in pari materia and should be construed together with the design of advancing the object of their provisions . . ."

". . . The framers of our constitution placed two limitations upon the debt contracting power. The first in sec. 12, supra, which indirectly limits any single debt, to an amount which can be discharged, both as to principal and interest, within fifty years, by the levy of a twelve mill tax upon the taxable property within such municipality; the second, found in sec. 13, supra, which limits the total indebtedness, for all purposes, which such municipality may incur to four per centum upon the taxable property within such municipality."

". . . It was the intention of the framers of the constitution that no restraints should be laid on municipalities in their efforts to procure a water supply, by either the purchase or construction of systems for such purpose, or of sewer systems. . . ."

"The proviso, 'any city, town or village may contract debts in excess of such limitation for the construction or purchase of a system for supplying water or of a sewer system for such city, town or village' clearly excepts indebtedness incurred for supplying water from the general provision of sec. 13, which limits the amount to which a city, town or village may become indebted to four per centum of the value of the taxable property within such city, town or village and is, in effect, permission, so far as the constitution regards this question, to become indebted in such an amount as may be necessary to furnish a supply of water for the municipality."

"It would be vain and idle to say to a municipality, you have permission to contract indebtedness in any amount for the supplying of water and then limit the municipality in the amount it may levy for taxes to pay such indebtedness."

Without quoting further and in view of the construction given the constitutional provisions by our Supreme Court, we are of the opinion that bonds of municipalities in New Mexico, regularly issued for the construction or purchase of a system for supplying water or for a sewer system for such city, town or village, do not come within the limitations as to tax levies for the payment of such bonds, both principal and interest.