

Opinion No. [30-104]

June 20, 1930

BY: J. A. MILLER, Assistant Attorney General

TO: Messrs. Bosworth, Chanute, Loughridge & Co., Corner 17th and California Streets, Denver, Colorado.

STATE HIGHWAY DEBENTURES -- Ch. 1, Sec. 1, Laws 1929 Special Session. § 64-1101, Code 1929.

OPINION

I have before me your recent letter in re the \$ 5,600,000.00 New Mexico State Highway Debentures, authorized by act of the Ninth Legislature of this State, and approved April 5, 1929.

You request from this office a construction of the language "to the extent to which it is now provided by law that the proceeds of the collection of such fees and taxes shall be covered into the State Road Fund, and the same are not otherwise pledged by the issuance and sale of bonds or debentures heretofore sold and now outstanding."

The language quoted, when read in connection with the context, particularly that portion of the context preceding and by which the State Highway Commission of the State of New Mexico is authorized to anticipate the proceeds of the collection of any and all of the gasoline excise taxes, motor vehicle registration fees and property taxes, in our opinion, refers to previous legislation by which such excise taxes and a portion of property tax were required to be covered into the State Road Fund.

Chapter 154, Laws of 1919, amends sections 15 and 16 of chapter 38 of the Laws of 1917, and provides that for the furnishing of funds for carrying out the provisions of the act there is levied upon all taxable property in this State an annual tax of 1 1/2 mills upon the dollar in lieu of taxes previously authorized for such purpose. By this act it is made the duty of the state auditor to cause such levy to be certified to the several boards of county commissioners and collected as other taxes are collected, the proceeds thereof to be paid by the county treasurers into the **State Road Fund**. "All of the **net** revenue derived from the licensing of motor vehicles under any law now in existence or that may hereafter be enacted, and all penalties that may be collected under any such law shall also be paid over to the state treasurer and covered into the **State Road Fund**. The State Highway Commission is authorized to anticipate the proceeds of such tax levies and licenses, or other revenues or income, by the issuance and sale of certificates or debentures to be called State Highway debentures, and

"So long as the said certificates or debentures that may be issued pledging the proceeds of any tax levies, license taxes, or revenues remain unpaid, the said taxes,

license taxes and revenues shall be continued levied, provided for and collected without reduction in the rate thereof, and the proceeds thereof shall be covered into the State Road Fund for the payment of the certificates or debentures respectively issued pledging the same." § 2, ch. 154, Laws of 1919.

We do not find that chapter 154 of the Session Laws of 1919, above referred to, was amended or repealed prior to 1929. We believe it to be a fact, however, that there were no debtors issued under that act which remained outstanding and unpaid at the time of the meeting of the special session of the legislature in 1929.

The act to which you make reference in your letter is chapter 1 of the Session Laws of New Mexico, enacted by special session of the Ninth State Legislature, and approved April 5, 1929.

This act has never been before our Supreme Court for construction. In an opinion prepared in this office last September and following a suggestion contained in a decision of the Supreme Court of New Mexico in *State v. Graham*, 32 N.M. 485, in which a similar statute was before the court, we held that the raising of money by the sale of debentures, as provided in chapter 1 of the Special Session of 1929, would constitute a borrowing of money by the State, and the contracting of a debt by or on behalf of the State, rather than by counties.

Question has been raised as to whether or not "property taxes" may be anticipated, the total amount of which might exceed \$ 2,000,000.00 and without a referendum vote. The question grows out of the wording of an amendment of article 9 of the constitution of New Mexico, by the adoption of section 16 thereof and the interpretation placed thereon by the court in the case of *State v. Graham*, supra.

Inasmuch as this question may at some time be brought before the court and this office be called upon to represent the Highway Department or some other department in such matter, it probably would not be proper for us at this time in a letter of this character to express an opinion relative thereto. We suggest this question, however, as one the investigation of which might be of interest to you.