

Opinion No. [30-51]

May 29, 1930

BY: J. A. MILLER,

TO: Guy Miner, Mayor, Des Moines, New Mexico.

MUNICIPAL CORPORATIONS -- § 12, Art. IX, Const.

OPINION

Acknowledgment is made of yours of the 27th inst. in which you make reference to the financial situation in Des Moines and the desire of the village board to borrow money in the sum of \$ 3,000.00 for the completion of a waterworks system in the village. Concerning this you ask two questions.

1. What rate of interest you may pay and
2. Whether the action of the present village board will be binding on the next incoming board.

In this connection your attention is called to section 12 of Article IX of the Constitution of the State of New Mexico, which pertains to the debt-contracting power of cities, towns and villages and which section is as follows:

"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 purposes 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 the 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."

From the foregoing it would appear that your present plan cannot be carried out. The question must of necessity be submitted to a vote of the qualified electors who have paid a property tax in the village during the preceding year and if approved by such electors a bond or bonds would have to be issued under authority of an ordinance, which would be irrevocable until the indebtedness therein provided for had been fully

paid and discharged. The interest which might be paid on such bonds shall in no case exceed 6% per annum.

My memory is that in our recent conversation pertaining to this subject you told me that an election was held sometime ago authorizing a bond issue large enough to meet all your requirements but that the bonds authorized were not all sold or issued, you having thought at that time that a less amount would be sufficient. As I think I then told you, such being the case, it would not be necessary to hold another election but that before advising definitely on the matter I should like to be provided with a transcript of the proceedings in such bond election. You do not say in your letter whether or not such transcript can be provided. If you can furnish the transcript and if it is found to be regular and to show the proper procedure it is our opinion that you may proceed to advertise and sell additional bonds under that authorization without being put to the annoyance of holding another election. You, of course, would not expect to be able to sell bonds without a buyer having opportunity to examine the record of proceedings so as to be satisfied that such bonds would be the valid and binding obligation of the village.