

**Opinion No. 31-296**

October 15, 1931

**BY:** E. K. Neumann, Attorney General

**TO:** Mr. J. C. Compton, District Attorney, Portales, New Mexico.

{\*113} This has reference to your letter of October 13th, 1931, in which you enclose a lease executed by the New Mexico Tractor and Equipment Company to Curry County New Mexico for two caterpillar model sixty tractors.

I have carefully read this lease and made somewhat of a research of the law in connection with the application of the Bateman Act to a transaction of this kind.

It is my opinion that this transaction is not prohibited by the Bateman Act. It is quite likely that this lease arrangement has been made with the object of evading the Bateman Act, but if so, I believe that it successfully evades it.

There is some authority to the effect that a provision of law similar to the Bateman Act does not prohibit a contract creating a liability greater than can be paid from the revenue of the current year, providing such liability is payable in installments, and that the installments falling due in any particular year are not greater than the revenue of that year. See Kirk vs. High (Ark.) 273 S. W. 389, 41 A. L. R. 782.

The present case, however, does not involve the creation of a liability which cannot be paid from the revenue of the current year. There is no liability on the part of the Board of County Commissioners to renew this lease at the end of the present fiscal year. They simply have the option to do so, if they find it desirable. A case similar in many respects to the one presented in Curry County, is Giles vs. Dennison (Okla.) 72 Pac. 174.

I am herewith returning the form of lease agreement enclosed with your letter.

By Quincy D. Adams,

Asst. Attorney General