

## Opinion No. 35-1175

August 6, 1935

**BY:** FRANK H. PATTON, Attorney General

**TO:** Mr. Juan N. Vigil, State Comptroller, Santa Fe, New Mexico.

{\*77} We have your letter of August 5th asking our opinion as to the powers of Water Users Associations formed under Chapter 150 of the 1929 Code to issue bonds. Section 150-104 constitutes such associations body corporate and provides that they shall have the capacity to make contracts, acquire, hold, enjoy, dispose of and convey property, real and personal, and to do any other act or thing necessary or proper for carrying out the purposes of their organization.

The evident purpose of such an association would be to maintain and operate an irrigation system to furnish water to its members. Chapter 150 of the Laws of 1929 evidently contemplates such an association constructing, maintaining and operating an irrigation system. It is our opinion that the powers of such an association authorizing it to acquire and hold property and to make contracts would impliedly authorize the association to borrow money and to issue its bonds therefor so long as the money borrowed and the bonds issued would be necessary to carry out the purpose of the association.

A similar situation arose in the case of Orme vs. Salt River Valley Water Users Association in Arizona. This case is reported in 217 Pac. 935 and the general rule of law is there stated as follows:

"But even though the articles did not confer this authority, the power to incur an indebtedness for corporate purposes would exist as an implied one, for -- 'the power to contract includes the power to borrow money for legitimate purposes; and the power to purchase includes the power to borrow money to pay for the thing purchased. {\*78} In fact, it may be layed down as a general rule that whenever the charter of a corporation gives it the power, expressly or impliedly, to purchase property or otherwise incur a debt, it has the implied power, in the absence of restrictions in its charter, to borrow money to pay for the property or to pay the debt.' 2 Fletcher on Corporations, Paragraph 939, Page 1891.

The power of a corporation to issue bonds for incorporate indebtedness is likewise implied where there are no restrictions in its articles of incorporation or the statute. It is a necessary result or incident of the power to contract a debt."

We believe that the principles layed down in the Arizona case are applicable in the instance of which you inquire.

By J. R. MODRALL,

Asst. Atty. General