

Opinion No. 35-894

February 8, 1935

BY: FRANK H. PATTON, Attorney General

TO: Honorable Arthur Starr, New Mexico State Senate, Santa Fe, New Mexico.

{*41} I have been requested to advise you regarding the constitutionality of Section 6 and 7 of House Bill No. 55, which is now in your Committee on Irrigation.

Bonds have been issued by the {*42} Middle Rio Grande Conservancy District in anticipation of the collection of certain taxes and assessments and Section 7 of said House Bill No. 55 is, in my opinion, beyond question unconstitutional in that it is clearly violative of the obligations of contract. It, therefore, is in contravention of Section 19 of Article II of the State Constitution and Section 10 of Article I of the Constitution of the United States.

Section 6 changes the method of collection from the method in force at the time of the issuance of such bonds and for the same reason impairs, in my belief, the obligation of contract and violates the constitutional provisions above mentioned.

I do not have time to write you a long opinion upon this question as I understand you desire it at once. However, I have arrived at this conclusion, after having read the case of Hendrickson vs. Apperson, 245 U.S. 105 and Moore vs. Gas Securities Company, 278 Fed. 111. In the latter case, issuance and sale of bonds by a Colorado irrigation district was had under a certain law.

It was provided by the law of the state at that time that the revenue laws for assessment, levying and collection of taxes for county purposes should be applicable for the purposes of the act. These revenue laws provided that taxes were payable one-half on or before the last of February of each year and the other half on or before the last day of July and that on default there should be a sale for all taxes delinquent and if there was no bidder the land should be struck off to the county.

Subsequent to the issuance of the bonds this section was amended by providing for a **separate** sale for **delinquent district** taxes and if there was no bidder the land should be struck off to the district which should be entitled to deed on payment of such sum as the county commissioner might fix.

It was held that this amendment gave the bondholders a different and less effective remedy for the collection of their bonds and was, therefore, void as being an impairment of the obligation of contract in violation of the federal constitution.

In the Hendrickson case, supra, under the law existing when bonds were issued it was the duty of the county court, when the office of sheriff was vacant, to appoint a single

collector under a single bond to collect all county taxes, including those levied to pay county debts. Subsequent to issuance of the bonds that law was amended authorizing the county court to appoint more than one collector under separate bonds, each charged with the duty of collecting certain part of the taxes.

For the reasons above stated, the court held that this amendment violated the obligation of the contract of the bondholders and was therefore void.