

Opinion No. 36-1399

June 30, 1936

BY: FRANK H. PATTON, Attorney General

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

{*127} In your letter of June 27, 1936, you ask our opinion with reference to counties and municipalities upon the following question:

"Is it permissible to set aside the revenues in excess of the budget estimates of a fiscal year and use same to liquidate the indebtedness incurred in excess of the budget allowances, said indebtedness having been incurred through unforeseen emergencies?"

I call your attention to Sections 90-920 and 33-5904, 1929 Compilation. These two sections, in my opinion, establish a definite limitation upon the right of cities and counties to incur indebtedness in excess of budget estimates. Of course, in the case of cities the limitation has reference to the amount appropriated by the city in its annual appropriation bill. However, the principle is the same. I find no exception to these limitations other than those mentioned in the statutes themselves. I assume that your question has reference to voluntary obligations incurred by cities and counties and in my opinion such obligations can not be lawfully incurred in excess of statutory limitations except as may be specially provided by law. I find no such special provisions other than those made in the statutes themselves.

With reference to cities I find the following statement of law in 44 C.J. 1120:

"Unless the constitution or statute imposing the limitation makes special provision for an emergency, or the limitation is construed not to be applicable to indebtedness for expenditures necessary to maintain the {*128} corporate existence of a municipality, necessity is no excuse for exceeding the limit prescribed nor is it an excuse that the city has accumulated property greater in value than the amount of its outstanding indebtedness."

I do not find that our Supreme Court has passed upon the particular question under discussion. It is my opinion therefore that expenditures of counties and cities in excess of statutory limitations and not permitted by any special statutory provision are, as a general rule, invalid even though they be made in payment of indebtedness incurred through unforeseen emergencies.

By QUINCY D. ADAMS,

Asst. Atty. General