Opinion No. 36-1415

July 29, 1936

BY: FRANK H. PATTON, Attorney General

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

*{*133}* We have your letter of July 29th in which you ask our opinion on certain matters with reference to bonds.

Your first question is whether or not refunding bonds can be issued to extend over a period past the date of maturity of the original issue. For instance, if a bond issue is made over the period 1920 to 1940 you ask whether it is possible to refund the issue in order that the last of the refunding bonds will mature in 1950. We refer you to Section 90-1102 of the 1929 Compilation which provides the method of issuing refunding bonds. The said statute provides, among other things, that the maturity date of said refunding bonds shall not be more than twenty-five (25) years from the date thereof and then says:

"Provided, that when bonds are issued to refund existing *{*134}* and outstanding bonds which may become due and payable at the option of a governing board as set out in the bonds to be refunded, the date of maturity of such refunding bonds shall not extend beyond the date of final maturity of such bonds to be so refunded."

The language of this proviso makes it quite clear that where the original bond issue has been subject to an optional call by the issuing body, bonds issued to refund such original bonds may not extend beyond the maturity date of the original issue. On the other hand, if the bonds to be refunded, that is, the original issue, were not optional bonds but had already matured, then the time of payment of the refunding issue could be made to run not to exceed twenty-five (25) years from the date of the new bonds. The whole question upon this point turns upon whether or not the original bond issue was optional.

Your second question is, where the principal of a maturing bond is in default but interest has been paid up to the date of maturity and all coupons have been paid, then whether or not the holder of the bond is entitled to additional interest after date of maturity so long as the principal amount remains unpaid. We believe that the question would depend almost entirely upon the wording of the particular bond and the contract contained therein but we feel that in most cases a court would hold that the owner of the bond was entitled to interest on the bond until it is paid. Funds would have to be raised for the payment of this additional interest in the regular manner of a levy upon the property included in the political subdivision liable upon said bonds.

By J. R. MODRALL,

Asst. Atty. General