

Opinion No. 37-1779

October 13, 1937

BY: FRANK H. PATTON, Attorney General

TO: Hon. E. L. Medler Assistant District Attorney Hot Springs, New Mexico

{*165} I have your letter of October 5th in connection with the proposed issuance of certain certificates of indebtedness to anticipate revenues to be derived from the operation of bath house and facilities and public buildings in Hot Springs, New Mexico.

In the first place, I do not believe that revenue bonds as such could be issued in this type of case under Chapter 61 of the Session Laws of 1937 because I do not believe a bath house and its facilities constitutes a utility as the term is used in said chapter.

Apparently there is no other statutory provision under which revenue bonds could be issued.

In so far as the limitation contained in the Constitution upon the {*166} debt creating power of a municipality is concerned, I believe you are correct and that certificates of indebtedness, if issued, would not come within the constitutional limitation.

Apparently it has been settled by the case of Seward vs. Bowers, 37 N.M. 385, 24 P. (2d) 253, which case holds that special fund revenues do not come within constitutional limitations.

As I view your proposition, the only question which you have to consider at all seriously is as to the authority of the municipality to issue these certificates of indebtedness.

There appears to be no specific statutory provision granting this authority to a municipality, but there is a possibility of there being an implied authority to issue such certificates of indebtedness by virtue of the provisions of Section 90-402, paragraph (56), which gives the power to municipalities to provide for the erection and care of all public buildings necessary for the use of the town.

It would be my belief that if the municipality desires to take the initiative and issue these certificates of indebtedness, and if the funds can be raised by the issuance of such certificates, that there would be no great objection to the procedure. At any rate, this is a matter of policy which must be determined by the municipality itself.