

## Opinion No. 38-1891

February 21, 1938

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

**TO:** Honorable George L. Reese, Jr., District Attorney Carlsbad, New Mexico

{\*214} Your letter of February 18th calls for an interpretation of Section 13. Article IX of the State Constitution in connection with your proposed bond issue for the purpose of constructing a municipal hospital for the City of Artesia.

You state that the City of Artesia has certain outstanding water and sewer bonds, which, if considered as a part of the existing indebtedness of the city within the debt limitation provided in the constitutional provision, will prevent the incurring of any new indebtedness. You also stated your view that the constitutional provision is subject to two constructions. Under one construction water and sewer bonds may be issued in any amount regardless of existing indebtedness and when once issued they become part of the bonded indebtedness and must be considered when any new indebtedness is attempted to be created unless the new indebtedness also be for water or sewers.

Under the second construction water and sewer bonds would not be considered as a part of the bonded indebtedness within the constitutional limit even after they are issued.

{\*215} Section 13, Article IX of the Constitution, after providing for a limitation upon the indebtedness of not to exceed 4% of the value of the taxable property within the municipality, provides specifically that such municipalities may contract debts in excess of such limitation for the construction or purchase of a system for supplying water or of a sewer system.

I have carefully studied the case of Lanigan vs. The Town of Gallup, 17 N.M. 627, and I find many statements contained in the opinion which interprets and construes both sections 12 and 13 of said article IX, which lead me to conclude that the Supreme Court was of the opinion that indebtedness for water and sewer systems is entirely outside of the 4% limitation and should not be considered as a part of the bonded indebtedness of the municipality.

In view of the specific language excepting water and sewer systems in said Section 13, and in view of the language used by the court in the above entitled case, it is my belief that sewer bonds should not be considered as a part of the bonded indebtedness within the constitutional limit even after such bonds have been issued.

I believe further that this opinion is in line with opinions Nos. 547, 984 and 994 heretofore rendered by this office in connection with this same general subject.