

Opinion No. 37-1839

December 14, 1937

BY: FRANK H. PATTON, Attorney General

TO: Mr. R. H. Collier Chief National Bank Examiner Eleventh Federal Reserve District
1708 Republic Building Dallas, Texas

{*202} We have carefully considered the question of whether or not the New Mexico Highway Debentures are general obligations of the state within the contemplation of Section 5136 of the Revised Statutes, Title 12, U. S. C., Sec. 24, and have concluded that they are general obligations of the state, and not special obligations.

The state has the unlimited power to borrow money on its own credit which is restricted only by the Constitutional limitations contained in Sections 7, 8 and 16 of Article 9 of the state Constitution. These limitations the Supreme Court has held in *State v. Connelly*, 39 N.M. 312, 46 P. (2d) 1097, to be confined to debts payable through a property tax levy. There is no limitation with respect to other general obligations payable by the exercise of its other unlimited powers of taxation.

To borrow, the state must act through its legislature. The Acts directing the borrowing of money by the issuance of these highway debentures pledge certain taxes allocated to the road fund, but does not limit its obligation, and hence its promise to pay the debentures is unconditional. Such an unconditional promise to pay pledges the faith and credit of the state, and the state may increase or allocate other taxes to the road fund, including property taxes to the extent authorized by Section 16 of Article 9 of the Constitution, to pay these debentures. These Acts must be read into the contract creating the liability.

We enclose herewith a memorandum prepared for the State Board {*203} of Finance by the law office of former Justice John Simms, which gives a detailed account of these various acts and discusses the character of these debentures. We also enclose [Illegible Word] supplemental memorandum prepared by our office and intended to reflect the views of the attorney general's office in the matter.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.